A/73/17

United Nations

Report of the United Nations Commission on International Trade Law

Fifty-first session
(25 June–13 July 2018)

General Assembly

Official Records
Seventy-third session
Supplement No. 17

General Assembly
Official Records
Seventy-third session
Supplement No. 17

Report of the United Nations Commission on International Trade Law

Fifty-first session
(25 June–13 July 2018)

United Nations • New York, 2018

Note

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a United Nations document.

ISSN 0251-9127

[31 July 2018]

Contents

		Page
I.	Introduction	1
II.	Organization of the session	1
	A. Opening of the session	1
	B. Membership and attendance	1
	C. Election of officers	2
	D. Agenda	2
	E. Establishment of the Committee of the Whole	4
	F. Adoption of the report	4
III.	Finalization and adoption of instruments on international commercial settlement agreements resulting from mediation	4
	A. Introduction	4
	B. Finalization and approval of the draft convention on international settlement agreements resulting from mediation	5
	1. Consideration of the draft convention	5
	2. Decision of the Commission and recommendation to the General Assembly	8
	C. Finalization and adoption of amendments to the UNCITRAL Model Law on International Commercial Conciliation	9
	1. Consideration of the draft amended Model Law	9
	2. Adoption of the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation	11
IV.	Consideration of issues in the area of micro, small and medium-sized enterprises	12
	A. Introduction	12
	B. Finalization of a draft legislative guide on key principles of a business registry: report of the Committee of the Whole	12
	1. Introduction	12
	2. Objectives of a business registry: paragraph 25	13
	3. Establishment and functions of the business registry	13
	4. Operation of the business registry	14
	5. Accessibility and information-sharing	15
	6. Fees: paragraph 197	15
	7. Liability and sanctions	16
	8. Underlying legal reforms	16
	C. Adoption of the report of the Committee of the Whole and of the *UNCITRAL Legislative Guide on Key Principles of a Business Registry*	16
	D. Progress report of Working Group I	17
V.	Consideration of issues in the area of insolvency law	17
	A. Finalization and adoption of the Model Law on the Recognition and Enforcement of Insolvency-Related Judgments and its guide to enactment	17
	1. Introduction	17

2. Article-by-article consideration ... 18

3. Guide to enactment of the Model Law on Recognition and Enforcement of Insolvency-Related Judgments ... 19

4. Renumbering of the articles of the Model Law and finalization of the guide to enactment ... 20

5. Adoption of the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments and its guide to enactment ... 20

B. Progress report of Working Group V ... 21

VI. Consideration of revised UNCITRAL texts in the area of privately financed infrastructure projects ... 22

VII. Investor-State dispute settlement reform: progress report of Working Group III ... 23

VIII. Electronic commerce: progress report of Working Group IV ... 24

IX. Security interests: progress report of Working Group VI ... 25

X. Celebration of the sixtieth anniversary of the New York Convention ... 26

A. Celebratory event ... 26

B. Decision of the Commission ... 27

XI. Coordination and cooperation ... 28

A. General ... 28

B. Reports of other international organizations ... 29

1. Permanent Court of Arbitration ... 29

2. Organization of American States ... 29

C. International governmental and non-governmental organizations invited to the sessions of UNCITRAL and its working groups ... 30

XII. Technical assistance to law reform ... 31

A. General ... 31

B. UNCITRAL regional presence ... 33

XIII. Status and promotion of UNCITRAL legal texts ... 34

A. General discussion ... 34

B. Functioning of the transparency repository ... 34

C. International commercial law moot competitions ... 35

1. Willem C. Vis International Commercial Arbitration Moot ... 35

2. Additional moots ... 36

D. Bibliography of recent writings related to the work of UNCITRAL ... 36

XIV. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts ... 37

XV. Role of UNCITRAL in promoting the rule of law at the national and international levels ... 38

A. Introduction ... 38

B. Summary of the rule of law briefing ... 39

C. Comments of the Commission on its current role in promoting the rule of law ... 39

XVI. Relevant General Assembly resolutions ... 40

XVII. Work programme ... 40
A. Current legislative programme ... 40
B. Future legislative programme ... 41
C. Technical cooperation and assistance activities ... 43
XVIII. Other business ... 44
A. Methods of work ... 44
B. Internship programme ... 46
C. Evaluation of the role of the Secretariat in facilitating the work of the Commission ... 46
XIX. Date and place of future meetings ... 47
A. Fifty-second session of the Commission ... 48
B. Sessions of working groups ... 48
1. Sessions of working groups between the fifty-first and fifty-second sessions of the Commission ... 48
2. Sessions of working groups in 2019 after the fifty-second session of the Commission ... 48

Annexes

I. United Nations Convention on International Settlement Agreements Resulting from Mediation ... 50
II. UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002) ... 56
III. UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments ... 63
IV. List of documents before the Commission at its fifty-first session ... 68

I. Introduction

1. The present report of the United Nations Commission on International Trade Law (UNCITRAL) covers the fifty-first session of the Commission, held in New York from 25 June to 13 July 2018.

2. Pursuant to General Assembly resolution 2205 (XXI) of 17 December 1966, this report is submitted to the Assembly and is also submitted for comments to the United Nations Conference on Trade and Development (UNCTAD).

II. Organization of the session

A. Opening of the session

3. The fifty-first session of the Commission was opened by the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel, Miguel de Serpa Soares, on 25 June 2018.

B. Membership and attendance

4. The General Assembly, in its resolution 2205 (XXI), established the Commission with a membership of 29 States, elected by the Assembly. By its resolution 3108 (XXVIII) of 12 December 1973, the Assembly increased the membership of the Commission from 29 to 36 States. By its resolution 57/20 of 19 November 2002, the General Assembly further increased the membership of the Commission from 36 States to 60 States. The current members of the Commission, elected on 14 November 2012, 14 December 2012, 9 November 2015, 15 April 2016 and 17 June 2016 are the following States, whose term of office expires on the last day prior to the beginning of the annual session of the Commission in the year indicated:[1] Argentina (2022), Armenia (2019), Australia (2022), Austria (2022), Belarus (2022), Brazil (2022), Bulgaria (2019), Burundi (2022), Cameroon (2019), Canada (2019), Chile (2022), China (2019), Colombia (2022), Côte d'Ivoire (2019), Czechia (2022), Denmark (2019), Ecuador (2019), El Salvador (2019), France (2019), Germany (2019), Greece (2019), Honduras (2019), Hungary (2019), India (2022), Indonesia (2019), Iran (Islamic Republic of) (2022), Israel (2022), Italy (2022), Japan (2019), Kenya (2022), Kuwait (2019), Lebanon (2022), Lesotho (2022), Liberia (2019), Libya (2022), Malaysia (2019), Mauritania (2019), Mauritius (2022), Mexico (2019), Namibia (2019), Nigeria (2022), Pakistan (2022), Panama (2019), Philippines (2022), Poland (2022), Republic of Korea (2019), Romania (2022), Russian Federation (2019), Sierra Leone (2019), Singapore (2019), Spain (2022), Sri Lanka (2022), Switzerland (2019), Thailand (2022), Turkey (2022), Uganda (2022), United Kingdom of Great Britain and Northern Ireland (2019), United States of America (2022), Venezuela (Bolivarian Republic of) (2022) and Zambia (2019).

5. With the exception of Armenia, Belarus, Cote d'Ivoire, El Salvador, Kenya, Lesotho, Liberia, Mauritania, Pakistan, Sierra Leone and Zambia, all the members of the Commission were represented at the session.

[1] Pursuant to General Assembly resolution 2205 (XXI), the members of the Commission are elected for a term of six years. Of the current membership, 29 were elected by the Assembly on 14 November 2012, at its sixty-seventh session, one was elected by the Assembly on 14 December 2012, also at its sixty-seventh session, 23 were elected by the Assembly on 9 November 2015, at its seventieth session, five were elected by the Assembly on 15 April 2016, also at its seventieth session, and two were elected by the Assembly on 17 June 2016, again at its seventieth session. By its resolution 31/99, the Assembly altered the dates of commencement and termination of membership by deciding that members would take office at the beginning of the first day of the regular annual session of the Commission immediately following their election and that their terms of office would expire on the last day prior to the opening of the seventh regular annual session following their election.

6. The session was attended by observers from the following States: Algeria, Bahrain, Belgium, Bolivia (Plurinational State of), Cambodia, Croatia, Dominican Republic, Finland, Gambia, Georgia, Iraq, Morocco, Myanmar, Nepal, Netherlands, Norway, Senegal, Sudan, Uruguay and Viet Nam.

7. The session was also attended by observers from the Holy See and the European Union.

8. The session was also attended by observers from the following international organizations:

(a) United Nations system: World Bank;

(b) Intergovernmental organizations: African Legal Support Facility, Gulf Cooperation Council, International Development Law Organization, International Institute for the Unification of Private Law (Unidroit), Organization of American States (OAS) and Permanent Court of Arbitration (PCA);

(c) Invited non-governmental organizations: American Arbitration Association/International Centre for Dispute Resolution (AAA/ICDR), American Bar Association, Arbitrators' and Mediators' Institute of New Zealand Inc., Association for the Promotion of Arbitration in Africa (APAA), Beijing Arbitration Commission/Beijing International Arbitration Center, China International Economic and Trade Arbitration Commission, Comité Maritime International (CMI), Council of the Notariats of the European Union, European Law Students' Association, EU Federation for the Factoring and Commercial Finance Industry, Factors Chain International, Florence International Mediation Chamber, Group of Latin American International Commercial Law Lawyers (GRULACI), Hong Kong Mediation Centre, INSOL International, International Academy of Mediators, International Arbitration Institute, International Bar Association (IBA), International Chamber of Commerce (ICC), International Insolvency Institute, International Law Institute (ILI), International Mediation Institute, International Union of Judicial Officers, International Union of Notaries, International Women's Insolvency and Restructuring Confederation, Internet Corporation for Assigned Names and Numbers, Jerusalem Arbitration Center, Moot Alumni Association, National Law Center for Inter-American Free Trade, New York International Arbitration Center, Russian Arbitration Association and Vienna International Arbitral Centre (VIAC).

9. The Commission welcomed the participation of international non-governmental organizations with expertise in the main items on the agenda. Their participation was crucial for the quality of texts formulated by the Commission and the Commission requested the Secretariat to continue to invite such organizations to its sessions.

C. Election of officers

10. The Commission elected the following officers:

Chair:	Beate Czerwenka (Germany)
Vice-Chairs:	Daniel Mbabazize (Uganda) Natalie Yu-Lin Morris-Sharma (Singapore) Zoltán Nemessányi (Hungary)
Rapporteur:	Juan Cuéllar Torres (Colombia)

D. Agenda

11. The agenda of the session, as amended, was adopted by the Commission at its 1069th meeting, on 25 June. It was as follows:

1. Opening of the session.
2. Election of officers.

3. Adoption of the agenda.

4. Finalization and adoption of instruments on international commercial settlement agreements resulting from mediation.

5. Consideration of issues in the area of micro, small and medium-sized enterprises:

   (a) Finalization and adoption of a legislative guide on key principles of a business registry;

   (b) Progress report of Working Group I.

6. Celebration of the sixtieth anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the "New York Convention").

7. Investor-State dispute settlement reform: progress report of Working Group III.

8. Electronic commerce: progress report of Working Group IV.

9. Security interests: progress report of Working Group VI.

10. Work programme of the Commission.

11. Date and place of future meetings.

12. Consideration of issues in the area of insolvency law:

   (a) Finalization and adoption of a model law on cross-border recognition and enforcement of insolvency-related judgments and its guide to enactment;

   (b) Progress report of Working Group V.

13. Coordination and cooperation:

   (a) General;

   (b) Reports of other international organizations;

   (c) International governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups.

14. Technical assistance to law reform:

   (a) General;

   (b) UNCITRAL regional presence.

15. Status and promotion of UNCITRAL legal texts:

   (a) General;

   (b) Functioning of the transparency repository;

   (c) International moot competitions;

   (d) Bibliography of recent writings related to the work of UNCITRAL.

16. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts: CLOUT and digests.

17. Role of UNCITRAL in promoting the rule of law at the national and international levels.

18. Relevant General Assembly resolutions.

19. Consideration of revised UNCITRAL texts in the area of privately financed infrastructure projects.

20. Other business.

21. Adoption of the report of the Commission.

E. Establishment of the Committee of the Whole

12. The Commission established a Committee of the Whole and referred to it, for consideration, agenda item 5 (a). The Commission elected Maria Chiara Malaguti (Italy) to chair the Committee of the Whole in her personal capacity. The Committee of the Whole met on 26 and 27 June 2018 and held four meetings. At its 1074th meeting, on 27 June, the Commission considered and adopted the report of the Committee of the Whole and agreed to include it in the present report (see para. 111 below). (The report of the Committee of the Whole is reproduced in chapter IV, section B, of the present report.)

F. Adoption of the report

13. The Commission adopted the present report by consensus at its 1078th meeting, on 29 June, at its 1081st meeting, on 3 July, at its 1082nd and 1083rd meetings, on 5 July, and at its 1085th meeting, on 6 July.

III. Finalization and adoption of instruments on international commercial settlement agreements resulting from mediation

A. Introduction

14. The Commission recalled its decision, made at its forty-eighth session, in 2015, to mandate Working Group II to commence work on the topic of enforcement of settlement agreements to identify relevant issues and develop possible solutions, including the possible preparation of a convention, model provisions or guidance texts.[2] At its forty-ninth session, in 2016, the Commission had confirmed that the Working Group should continue its work on the topic.[3] At its fiftieth session, in 2017, the Commission had taken note of the compromise reached by the Working Group at its sixty-sixth session (A/CN.9/901, para. 52) and had expressed support for the Working Group to finalize its work on the basis of that compromise by preparing a draft convention on international settlement agreements resulting from mediation as well as a draft amendment to the UNCITRAL Model Law on International Commercial Conciliation (2002).[4]

15. The Commission had before it the reports of Working Group II (Dispute Settlement) on the work of its sixty-seventh session, held in Vienna from 2 to 6 October 2017, and of its sixty-eighth session, held in New York from 5 to 9 February 2018 (A/CN.9/929 and A/CN.9/934).

16. It also had before it the texts of the draft convention on international settlement agreements resulting from mediation as contained in document A/CN.9/942 and of the draft amended UNCITRAL Model Law on International Commercial Conciliation as contained in document A/CN.9/943 (together referred to as the "draft instruments").

17. The Commission took note of the summary of the deliberations on the draft instruments that had taken place at the sixty-seventh and sixty-eighth sessions of the Working Group, and of the consensus reached by the Working Group in relation to the instruments. The Commission also took note of the comments by States on the draft instruments as set out in document A/CN.9/945.

---

[2] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), paras. 135–142.

[3] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 162–165.

[4] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), paras. 236–239.

B. Finalization and approval of the draft convention on international settlement agreements resulting from mediation

1. Consideration of the draft convention

18. The Commission considered the text of the draft convention, as contained in paragraph 4 of document A/CN.9/942.

Terminology

19. The Commission affirmed the decision of the Working Group to replace the term "conciliation" with "mediation" throughout the draft instruments and approved the explanatory text describing the rationale for that change, as indicated in document A/CN.9/942, paragraph 5, which would be used, with necessary adjustments, when revising existing UNCITRAL texts on conciliation (see also para. 51 below).

Title and preamble

20. The Commission approved the title of the draft convention and the preamble.

Reference to "Party/Parties to the Convention"

21. The Commission agreed that the term "a Party to the Convention" or "Parties to the Convention" should be used in the draft convention.

Draft article 1: Scope of application

22. The Commission approved article 1, without modification.

Draft article 2: Definitions

Paragraph 2

23. The Commission agreed that the definition of the terms "electronic communication" and "data message" should be deleted from paragraph 2 on the basis that those definitions were contained in other United Nations and UNCITRAL instruments, namely the United Nations Convention on the Use of Electronic Communications in International Contracts (2005), the UNCITRAL Model Law on Electronic Commerce (1996) and the UNCITRAL Model Law on Electronic Signatures (2001), which could be used as a reference for the interpretation of those terms in the context of the draft convention.

Paragraph 4

24. The Commission considered paragraph 4, aimed at clarifying the notions of "granting relief" and "seeking relief". A proposal was made to simplify paragraph 4 along the lines of: "'Relief' means any of the actions set out in article 3". It was, however, pointed out that the notion of "actions" might be ambiguous. Another suggestion was made to delete paragraph 4 and include a cross reference to article 3 in the chapeau of article 4 in order to make it abundantly clear that the term "relief" referred to both enforcement of settlement agreements (under art. 3, para. 1) and the right for a party to invoke a settlement agreement as a defence against a claim (under art. 3, para. 2). After discussion, the Commission agreed to delete paragraph 4 as it was generally considered unnecessary.

25. The Commission approved article 2, as modified (see paras. 23 and 24 above).

Draft article 3: General principles

26. The Commission noted that article 3 provided for States' obligations under the draft convention regarding both enforcement of settlement agreements (para. 1) and the right for a party to invoke a settlement agreement as a defence against a claim (para. 2). It was clarified that the fact that the notions of "enforcement" and "enforceability" as used in the instruments should not be understood as indicating that

enforcement referred to something different to enforceability. It was stated that "enforcement" in the meaning of the instruments covered both the process of issuing an enforceable title and the enforcement of that title.

27. The Commission approved article 3, without modification.

Draft article 4. Requirements for reliance on settlement agreements

28. The Commission noted that article 4 reflected a balance between the formalities that were required to ascertain that a settlement agreement resulted from mediation and the need for the draft convention to preserve the flexible nature of the mediation process.

29. The Commission considered whether the words "such as", which appeared at the end of the chapeau of paragraph 1 (b), should be replaced with the words "in the form of". Support was expressed for retaining the words "such as" as it was considered that they better expressed the open-ended nature of the list in article 4, paragraph 1, should the parties be unable to produce the evidence that the settlement agreement resulted from mediation listed in article 4, subparagraphs 1 (b) (i)–(iii) (see also below, para. 60).

30. The Commission approved article 4, without modification.

Draft article 5. Grounds for refusing to grant relief

31. The Commission noted the extensive consultations held by the Working Group at its sixty-eighth session aimed at clarifying the various grounds provided for in paragraph 1, in particular the relationship between subparagraph (b) (i), which mirrored a similar provision of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and was considered to be of a generic nature, and subparagraphs (b) (ii) and (iii), (c) and (d), which were deemed to be illustrative in nature. The Commission also noted that, at that session of the Working Group, various attempts to group the grounds differently had been unsuccessful; such attempts represented serious efforts to avoid overlap, in the light of the importance of the issue; difficulties arose because of the need to accommodate the concerns of different domestic legal systems, which had resulted in the failure of attempts to achieve consensus. The Commission further noted the shared understanding of the Working Group that there might be overlap among the grounds provided for in paragraph 1 and that competent authorities should take that aspect into account when interpreting the various grounds.

32. The Commission approved article 5, without modification.

Draft article 6. Parallel applications or claims

33. The Commission noted that article 6 provided the competent authority with the discretion to adjourn its decision if an application or claim relating to a settlement agreement had been made to a court, arbitral tribunal or other competent authority, which might affect the process. The Commission confirmed the understanding of the Working Group that article 6 should apply both when enforcement of a settlement agreement was sought and when a settlement agreement was invoked as a defence.

34. The Commission approved article 6, without modification.

Draft article 7. Other laws or treaties

35. The Commission considered article 7, which mirrored article VII of the New York Convention and was aimed at permitting the application of more favourable national legislation or treaties to matters covered by the draft convention. The Commission confirmed the understanding that: (a) article 7 would not allow States to apply the draft convention to settlement agreements excluded under article 1, paragraphs 2 and 3, as such settlement agreements would fall outside the scope of the draft convention;

and (b) States would nevertheless have the flexibility to enact relevant domestic legislation, which could include in its scope such settlement agreements.

36. The Commission approved article 7, without modification.

Draft final provisions

Draft article 8: Reservations

37. The Commission noted that article 8 provided for two reservations authorized under the draft convention.

38. Regarding the reservation on the application of the draft convention on the basis of the parties' consent, under subparagraph 1 (b), the Commission recalled paragraph 78 of document A/CN.9/934, in which it was clarified that, with regard to how article 8, subparagraph 1 (b), of the draft convention would operate in practice, the understanding was that even without an explicit provision in the draft convention, parties to a settlement agreement would be able to exclude the application of the draft convention.

39. In the context of those discussions, it was further clarified that subparagraph 1 (b) referred to an opt-in possibility, and that article 5, subparagraph 1 (d), would find application where the parties would agree to opt out of the application of the draft convention.

40. After discussion, the Commission approved article 8, without modification.

Draft article 9: Effect on settlement agreements

41. The Commission noted that article 9 addressed the impact of the entry into force of the draft convention and of any reservations or withdrawal thereof on settlement agreements concluded before such entry into force. Similarly, article 16, paragraph 2, addressed the effect of the denunciation of the draft convention on settlement agreements concluded before such denunciation took effect. It was recalled that the purpose of the provisions was to enhance legal certainty for parties to settlement agreements.

42. The Commission approved article 9, without modification.

Draft article 11: Signature, ratification, acceptance, approval, accession

43. In connection with draft article 11, the attention of the Commission was drawn to an offer from the Government of Singapore to organize a ceremony for the signing of the convention, once adopted. The Commission was informed that the Government of Singapore was prepared to assume the additional costs that might be incurred by convening a signing ceremony outside the premises of the United Nations so that the organization of the signing ceremony would not require additional resources under the United Nations budget.

44. The Commission expressed its gratitude for the offer of the Government of Singapore to act as host for such an event, and the proposal was unanimously supported. The Commission therefore agreed that paragraph 1 of article 11 would read as follows: "This Convention is open for signature by all States in Singapore, on 1 August 2019, and thereafter at United Nations Headquarters in New York."

45. Unanimous support was also expressed for the convention to be referred to as the "Singapore Convention on Mediation".

Draft article 13: Non-unified legal systems — Draft article 15: Amendment

46. The Commission clarified the understanding that article 13 would be applicable in the context of amendments to the convention under article 15, so that States could avail themselves of article 13 to decide whether and how to apply amendments to the convention under article 15 to their territorial units.

47. The Commission approved in substance articles 10 to 16, as modified (see para. 44 above).

Material accompanying the draft convention

48. The Commission agreed that, resources permitting, the *travaux préparatoires* of the draft convention should be compiled by the Secretariat, so that they could be easily accessible.

2. Decision of the Commission and recommendation to the General Assembly

49. At its 1070th meeting, on 25 June 2018, the Commission adopted by consensus the following decision and recommendation to the General Assembly:

The United Nations Commission on International Trade Law,

Recalling its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recognizing the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations,

Recalling General Assembly resolution 57/18 of 19 November 2002, in which the Assembly noted with appreciation the adoption of the United Nations Commission on International Trade Law Model Law on International Commercial Conciliation (2002),[5] and expressing the conviction that the Model Law, together with the United Nations Commission on International Trade Law Conciliation Rules (1980),[6] the use of which was recommended by the General Assembly in its resolution 35/52 of 4 December 1980, contributes significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

Convinced that the adoption of a convention on international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would complement the existing legal framework on international mediation and would contribute to the development of harmonious international economic relations,

Recalling that the decision of the Commission to concurrently prepare a draft convention on international settlement agreements resulting from mediation and an amendment to the Model Law on International Commercial Conciliation was intended to accommodate the different levels of experience with mediation in different jurisdictions and to provide States with consistent standards on cross-border enforcement of international settlement agreements resulting from mediation, without creating any expectation that interested States will adopt either instrument,[7]

Noting that the preparation of the draft convention on international settlement agreements resulting from mediation was the subject of due deliberation in the Commission and that the draft convention benefited from consultations with Governments and interested intergovernmental and invited non-governmental organizations,

Having considered the draft convention at its fifty-first session, in 2018,

Drawing attention to the fact that the text of the draft convention was circulated for comment before the fifty-first session of the Commission to all Governments invited to attend the meetings of the Commission and the Working Group as members or observers,

---

[5] General Assembly resolution 57/18, annex.

[6] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17* (A/35/17), chap. V, sect. A, para. 106. See also *UNCITRAL Yearbook*, vol. XI: 1980, part three, annex II.

[7] A/CN.9/901, para. 93.

Considering that the draft convention has received sufficient consideration and has reached the level of maturity for it to be generally acceptable to States,

1. *Submits* to the General Assembly the draft convention on international settlement agreements resulting from mediation, as it appears in annex I to the report of the United Nations Commission on International Trade Law on the work of its fifty-first session;[8]

2. *Recommends* that the General Assembly, taking into account the extensive consideration given to the draft convention by the Commission and its Working Group II (Dispute Settlement), consider the draft convention with a view to adopting, at its seventy-third session, on the basis of the draft convention approved by the Commission, a United Nations Convention on International Settlement Agreements Resulting from Mediation, authorizing a signing ceremony to be held as soon as practicable in 2019 in Singapore, upon which the Convention would be open for signature, and recommending that the Convention be known as the "Singapore Convention on Mediation";

3. *Requests* the Secretary-General to publish the Convention, upon adoption, including electronically, in the six official languages of the United Nations and to disseminate it broadly to Governments and other interested bodies.

C. Finalization and adoption of amendments to the UNCITRAL Model Law on International Commercial Conciliation

1. Consideration of the draft amended Model Law

50. The Commission approved the title of the draft amended Model Law, as well as its structure and presentation in three different sections. The Commission agreed to replace the word "Mediation" in the heading of section 2 with the words "International commercial mediation", it being understood that such modification would not have any implication as to the applicability of the Model Law to various fields where mediation was used, including investor-State dispute settlement.

51. The Commission also approved the replacement of the term "conciliation" by "mediation" throughout the draft instruments, as well as in the explanatory text describing the rationale for that change reproduced in footnote 2 to the draft amended Model Law (see also para. 19 above).

52. The Commission noted that, in its deliberations on the draft amended Model Law, the Working Group had generally agreed that the guiding principles would be to ensure a level of consistency with the draft convention and, at the same time, to preserve the existing text of the Model Law to the extent possible.

Draft section 1: General provisions

53. The Commission adopted section 1, without modification.

Draft section 2: International commercial mediation

54. The Commission adopted section 2, with the modification to its title (see para. 50 above).

Draft section 3: International settlement agreements

55. The Commission considered draft articles 16 to 20, which addressed international settlement agreements in a manner consistent with the draft convention.

[8] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17).

Draft article 16: Scope of application of the section and definitions

56. The Commission agreed that the modifications approved with respect to the draft convention should be reflected in the relevant provisions of the draft amended Model Law (see above, paras. 23 and 24). Accordingly, the Commission agreed to delete the definition of the terms "electronic communication" and "data message" in draft article 16, paragraph 6, and to delete draft article 16, paragraph 7.

57. The Commission adopted article 16, as modified (see para. 56 above).

Draft article 17: General principles

58. The Commission noted that article 17 provided for the principles regarding both enforcement of settlement agreements (para. 1) and the right for a party to invoke a settlement agreement as a defence against a claim (para. 2).

59. The Commission adopted article 17, without modification.

Draft article 18: Requirements for reliance on settlement agreements

60. The Commission noted that article 18 reflected a balance between the formalities that would be required to ascertain that the settlement agreement resulted from mediation and the need for the instrument to preserve the flexible nature of the mediation process. As agreed in the context of the consideration of the draft convention, the Commission agreed to retain the words "such as", which appeared at the end of the chapeau of paragraph 1 (b) (see above, para. 29).

61. The Commission adopted article 18, without modification.

Draft article 19: Grounds for refusing to grant relief

62. The Commission noted the extensive consultations of the Working Group at its sixty-eighth session aimed at clarifying the various grounds provided for in paragraph 1 (see also above, para. 31).

63. The Commission adopted article 19, without modification.

Draft article 20: Parallel applications or claims

64. The Commission noted that article 20 provided the competent authority with the discretion to adjourn its decision if an application or claim relating to the settlement agreement had been made to a court, arbitral tribunal or other competent authority, which might affect the process.

65. The Commission adopted article 20, without modification.

Footnotes

66. The Commission considered the footnotes to the draft amended Model Law. The Commission agreed that the third sentence of footnote 5 should become a separate footnote to article 16, paragraph 1. In footnote 6, the Commission agreed to add the word "also" before the word "international" so that the possible addition to paragraph 4 in footnote 6 would read as follows: "A settlement agreement is also 'international' if it results from international mediation as defined in article 3, paragraphs 2, 3 and 4."

Material accompanying the draft amended Model Law

67. The Commission noted the recommendation of the Working Group that, resources permitting, the *travaux préparatoires* of the draft amended Model Law should be compiled by the Secretariat so that they could be easily accessible. It was agreed that the Secretariat should be tasked with the preparation of a text to supplement the "Guide to enactment and use of the UNCITRAL Model Law on International Commercial Conciliation".[9] In that regard, the Commission agreed that

[9] *UNCITRAL Yearbook*, vol. XXXIII: 2002, part three, annex II.

the "Guide to enactment and use" should provide guidance on how sections 2 and 3 of the amended Model Law should each be enacted as a stand-alone legislative text.

2. Adoption of the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation

68. At its 1070th meeting, on 25 June 2018, the Commission adopted by consensus the following decision:

The United Nations Commission on International Trade Law,

Recalling its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recognizing the value of mediation as a method of amicably settling disputes arising in the context of international commercial relations,

Recalling General Assembly resolution 57/18 of 19 November 2002, in which the Assembly noted with appreciation the adoption of the United Nations Commission on International Trade Law Model Law on International Commercial Conciliation (2002), and expressing the conviction that the Model Law, together with the United Nations Commission on International Trade Law Conciliation Rules (1980),[10] the use of which was recommended by the General Assembly in its resolution 35/52 of 4 December 1980, contributes significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

Believing that the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation will significantly assist States in enhancing their legislation governing the use of modern mediation techniques and in formulating such legislation where none currently exists,

Recalling that the decision of the Commission to concurrently prepare a draft convention on international settlement agreements resulting from mediation and an amendment to the Model Law on International Commercial Conciliation was intended to accommodate the different levels of experience with mediation in different jurisdictions and to provide States with consistent standards on cross-border enforcement of international settlement agreements resulting from mediation, without creating any expectation that interested States will adopt either instrument,[11]

Noting that the preparation of the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation was the subject of due deliberation in the Commission and that the draft Model Law benefited from consultations with Governments and interested intergovernmental and invited non-governmental organizations,

1. *Adopts* the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation as it appears in annex II to the report of the United Nations Commission on International Trade Law on the work of its fifty-first session;[12]

2. *Recommends* that all States give favourable consideration to the enactment of the Model Law on International Commercial Mediation and

[10] *Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17* (A/35/17), chap. V, sect. A, para. 106. See also *UNCITRAL Yearbook*, vol. XI: 1980, part three, annex II.

[11] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), paras. 238 and 239. See also A/CN.9/901, para. 93.

[12] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17).

International Settlement Agreements Resulting from Mediation when they enact or revise their laws, in view of the desirability of uniformity of the law of dispute settlement procedures and the specific needs of international commercial mediation practice;

3. *Requests* the Secretary-General to publish the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, including electronically, in the six official languages of the United Nations, and to disseminate it broadly to Governments and other interested bodies.

IV. Consideration of issues in the area of micro, small and medium-sized enterprises

A. Introduction

69. The Commission recalled that, at its forty-sixth session, in 2013, it had agreed that work on reducing the legal obstacles faced by micro, small and medium-sized enterprises throughout their life cycle, in particular in developing economies, should be added to its work programme and that such work should be allocated to Working Group I. The Commission also recalled that it had agreed at that session that such work should start with a focus on legal questions surrounding the simplification of incorporation.[13] The Commission further recalled that Working Group I, since its twenty-third session, in 2014, had considered the legal issues surrounding the simplification of incorporation and good practices in business registration, both of which aimed at reducing the legal obstacles encountered by micro, small and medium-sized enterprises throughout their life cycle.

70. The Commission had before it: (a) the reports of Working Group I (Micro, Small and Medium-sized Enterprises) on its twenty-ninth and thirtieth sessions (A/CN.9/928 and A/CN.9/933, respectively); (b) a note by the Secretariat on the draft legislative guide on key principles of a business registry (A/CN.9/940); and (c) a note by the Secretariat on adopting an enabling legal environment for the operation of micro, small and medium-sized enterprises (A/CN.9/941), which was intended to provide the context for the work of UNCITRAL on micro, small and medium-sized enterprises.

B. Finalization of a draft legislative guide on key principles of a business registry: report of the Committee of the Whole

71. The Committee of the Whole, established by the Commission at its fifty-first session (see para. 12 above), considered the text of the draft legislative guide on key principles of a business registry and approved the changes as set out below. Paragraphs and recommendations not referred to below were adopted by the Committee as drafted.

1. Introduction

Paragraph 2

72. The Committee agreed to replace the word "certain" with "many" and to add the words "depending on their legal forms" after the word "businesses".

Terminology: paragraph 12

73. To resolve concerns about the use of terminology, the Committee agreed to delete the definition of "business registration" and the reference to "business registration system" in the definition of "business registry" and to adopt the following definition of "business registry": "'Business registry' means the State's mechanism

[13] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 321.

for receiving, storing and making accessible to the public certain information about businesses, as required by domestic law."

74. The Committee also agreed to add a footnote to that definition to the following effect: "The business registry may also function as a one-stop shop to support mandatory registration with other relevant authorities (e.g., taxation and social security authorities) — this is discussed further in paragraph 57." With respect to the use of the phrase "business registration system" throughout the text, the Committee agreed that it could be replaced with the term "business registry" as appropriate; it was noted that the direct replacement would not be possible in all instances.

75. The Committee agreed to delete the definition of "formal economy" on the basis that that issue was addressed in A/CN.9/941.

76. The Committee agreed to delete the words "or a non-business entity" from the definition of "unique identifier" and from other parts of the text, as appropriate, such as from paragraphs 101 and 104 (see paras. 92 and 93 below).

2. Objectives of a business registry: paragraph 25

77. The Committee agreed to delete from the paragraph the sentence commencing with the words "A desirable approach" and also agreed that the paragraph should end after the words "and social security authorities" in the penultimate sentence.

Purposes of the business registry: paragraph 26

78. The Committee agreed to delete the following words from the paragraph: "However, since business registration may be viewed as a conduit through which businesses of all sizes and legal forms interact with the State and operate in the formal economy (see paras. 123 to 126 below and rec. 20),".

79. The Committee agreed to add, before the penultimate sentence of paragraph 26, text explaining that, in some States, one of the consequences of business registration was that the registered information had *erga omnes* legal effect.

Simple and predictable legislative framework permitting registration: recommendation 3

80. The Committee agreed that the chapeau and subparagraph (a) of the recommendation should read: "Laws governing the business registry should: (a) Adopt a simple structure and avoid the unnecessary use of exceptions or granting of discretionary power;".

Key features of a business registry: paragraph 32

81. The Committee agreed to delete from the paragraph the following words: "whether or not the information in the business registry is legally binding on the registry, the registrant, the registered business or on third parties, nor to".

3. Establishment and functions of the business registry

Responsible authority: paragraph 40

82. The Committee agreed to replace the word "liability" in the first sentence with the word "responsibility".

Appointment and accountability of the registrar: paragraph 43

83. The Committee agreed to revise the second sentence as follows: "In this regard, the applicable law of the enacting State should establish principles for the accountability of the registrar to ensure appropriate conduct in administering the business registry (the potential liability of the registry is addressed in paras. 213–218 and rec. 47 below)."

Core functions of business registries: paragraphs 53 and 56

84. The Committee agreed to delete from paragraph 53 the words "and in any event, the assignment of a unique identifier will assist in ensuring the unique identity of the business within and across jurisdictions (see also paras. 98 to 105 below)."

85. The Committee also agreed that the reference to email in paragraph 56 (as well as paras. 74, 120 and 196) should be expanded to include electronic address or other electronic means of communication.

4. Operation of the business registry

Electronic, paper-based or mixed registry: recommendation 12

86. The Committee agreed to replace the title of the recommendation with "Medium to operate a business registry".

Electronic documents and electronic authentication methods: paragraph 85 and recommendation 13

87. The Committee agreed to modify the third sentence of paragraph 85 to refer to "electronic signature or other means of identification and authentication".

88. The Secretariat was requested to ensure that the reference to "electronic signatures and other equivalent identification methods" in recommendation 13, subparagraph (a), was consistent with the language used in other UNCITRAL texts.

A one-stop shop for business registration and registration with other authorities: paragraphs 86 and 88

89. The Committee agreed to delete the reference to "justice and employment authorities" in paragraph 86.

90. The Committee also agreed to delete the second sentence of paragraph 88 and to adjust the third sentence as appropriate, in particular by deleting the word "additional".

Use of unique identifiers: paragraphs 98, 101 and 102

91. The Committee agreed to delete the last sentence of paragraph 98.

92. The Committee also agreed to replace the word "entities" in the first sentence of paragraph 101 with the word "businesses" and similarly the word "entity" with the word "business" in the penultimate sentence. The Committee further agreed to revise the third sentence as follows: "The unique identifier is usually allocated by an authority with which the business is required to register and does not change during the existence of that business, or after its deregistration."

93. The Committee further agreed to delete the last two sentences of paragraph 102.

Business permitted or required to register: paragraphs 124 and 125

94. The Committee agreed to delete the reference to "government bodies" in the fourth sentence of paragraph 124.

95. In respect of paragraph 125, the Committee agreed that: (a) the first sentence should end after the word "markets"; (b) the words "and, subject to the legal form chosen for the business which may require it to be registered," should be deleted; and (c) the new second sentence should be revised as follows: "In any event, registration is always required for the separation of personal assets from assets devoted to the business or for limiting the liability of the owner of the business."

Minimum information required for registration: paragraph 127

96. The Committee agreed to delete the words "and economic framework" from the first sentence of the paragraph.

Rejection of an application for registration: paragraph 149

97. The Committee agreed to replace "may" with "must" and to add the word "only" before the word "if" in the first sentence of the paragraph, as well as to delete the last sentence of that paragraph.

5. Accessibility and information-sharing

Access to registration services of the business registry: paragraph 167 and recommendation 33

98. The Committee agreed that: (a) the title of section B and that of recommendation 33 should be changed to: "Access to services of the business registry"; (b) the first sentence of paragraph 167 should refer to "all potential users, including potential registrants"; and (c) the opening phrase of recommendation 33 should be amended to read: "The law should permit access to the business registry without discrimination".

Equal rights of women to access the registration services of the business registry: paragraphs 173 and 174 and recommendation 34

99. The Committee agreed that in the last sentence of paragraph 173, the word "some" should be replaced with "many".

100. The Committee also agreed that in the last sentence of paragraph 174, a reference should be added to the Universal Declaration of Human Rights so that the sentence reads: "Such steps are also in compliance with the non-discrimination commitments of States under international human rights instruments, such as the Universal Declaration of Human Rights, as well as with the obligations of States parties to the United Nations Convention on the Elimination of All Forms of Discrimination against Women and other United Nations treaties for the elimination of discrimination based on gender."

101. The Committee further agreed to add a new paragraph after paragraph 174 along the lines of: "To establish gender-neutral business registration frameworks, States also need to institute policies to collect anonymized, sex-disaggregated data for business registration on a voluntary basis through the business registry. Such efforts would facilitate a Government's ability to determine the extent of informal barriers. Evidence for policy development continues to suffer because of the lack of sex-disaggregated data for statistical purposes."

102. Finally, the Committee agreed to add a new subparagraph to recommendation 34, reading: "(c) Provide for the adoption of policies to collect anonymized, sex-disaggregated data for business registration through the business registry."

Direct electronic access to submit registration, to request amendments and to search the registry: paragraphs 185 and 188 and recommendation 37

103. The Committee agreed to: (a) revise the title of section F and recommendation 37 to "Direct electronic access to registry services"; (b) add the words "including mobile devices," after the words "any electronic device" in the first sentence of paragraph 185; and (c) delete the last two sentences of that paragraph.

104. The Committee also agreed to revise paragraph 188 as follows: (a) to end the third sentence after the words "multiple points of access"; and (b) to revise the last sentence to read: "The overall objective of access to business registry services is the same for both electronic and paper-based or mixed registries: to make the registration and information retrieval process as simple, transparent, efficient, inexpensive and publicly accessible as possible."

6. Fees: paragraph 197

105. The Committee agreed to delete the words "while to a lesser extent, fines may also generate funds" from the paragraph.

Fees charged for information: recommendation 42

106. The Committee agreed to add the word "Basic" at the beginning of recommendation 42, subparagraph (a).

7. Liability and sanctions

107. The Committee agreed to move paragraph 210 to follow paragraph 207.

8. Underlying legal reforms

Clarity of the law: paragraphs 238 and 239 and recommendation 56

108. The Committee agreed to: (a) delete paragraph 238; (b) insert ", where possible," after the word "unification" in paragraph 239; (c) add ", in a clear manner," after the word "should" in recommendation 56; and (d) end that recommendation after the words "business registration".

Flexible legal forms for business: paragraph 240 and recommendation 57

109. The Committee heard a proposal to delete recommendation 57, subparagraph (b), or, if deletion was not approved, to revise it along the following lines: "The law in all States, no matter which registration system may apply, should adopt the measures necessary to promote the creation and growth of businesses and ensure that the registration procedures for micro, small and medium-sized enterprises are fast, efficient, reliable and low cost."

110. In the course of the discussion of that proposal, the Committee heard a number of additional proposals seeking to achieve a compromise between different views on the substance of the recommendation. Although some of those proposals received some support, the Committee ultimately agreed that recommendation 57, subparagraph (b), should be deleted. The Committee agreed that a cross reference to paragraphs 115–117 should be added at the end of paragraph 240.

C. Adoption of the report of the Committee of the Whole and of the *UNCITRAL Legislative Guide on Key Principles of a Business Registry*

111. At its 1074th meeting, on 27 June 2018, the Commission adopted the report of the Committee of the Whole and agreed that it should form part of the present report. It also adopted the following decision:

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, in which the Assembly established the United Nations Commission on International Trade Law with the purpose of promoting the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

Recognizing the importance to all States of a fair, stable and predictable legal framework for the promotion of development-oriented policies that support productive activities, decent job creation, entrepreneurship, the equal rights of women to economic resources, creativity and innovation, and encourage the formalization and growth of micro, small and medium-sized enterprises,

Noting that simple, efficient and cost-effective business registration can assist in business formation of all sizes and types of business, in particular micro, small and medium-sized enterprises,

Noting also that when business registries perform their functions in accordance with simplified and streamlined procedures they greatly contribute to the economic development of a State as they allow expedited access to business information from interested users, including from foreign jurisdictions,

thus facilitating the search for potential business partners, clients or sources of finance and reducing risks in transacting and contracting,

Noting further the widespread wave of reforms of business registration systems carried out by States in all regions and at all levels of development and, accordingly, the wealth of lessons learned that have informed the preparation of the legislative guide on key principles of a business registry and the growing opportunities for the use and application of such guide,

Recalling the mandate given to Working Group I (Micro, Small and Medium-sized Enterprises) to prepare legal standards aimed at reducing the legal obstacles encountered by micro, small and medium-sized enterprises throughout their life cycle, in particular those in developing economies,

Convinced that legislative recommendations negotiated internationally through a process involving a broad range of constituents will be useful to both States that do not have an efficient and effective business registration system and States that are undertaking a process of review and reform of their business registration systems,

Expressing its appreciation to Working Group I for its work in developing the draft legislative guide on key principles of a business registry and to intergovernmental and invited non-governmental organizations active in the field of business registration reform for their support and participation,

1. *Adopts* the *UNCITRAL Legislative Guide on Key Principles of a Business Registry*, contained in document A/CN.9/940, as revised by the Commission at its fifty-first session,[14] and authorizes the Secretariat to edit and finalize the text of the *Legislative Guide* in the light of those revisions;

2. *Requests* the Secretary-General to publish the *Legislative Guide*, including electronically, in the six official languages of the United Nations, and to disseminate it to Governments and other interested bodies, so that it becomes widely known and available;

3. *Recommends* that the *Legislative Guide* be given due consideration, as appropriate, by legislators, policymakers, registry system designers and other interested bodies and individuals.

D. Progress report of Working Group I

112. The Commission noted that Working Group I, at its thirty-first session, would resume its deliberations on a draft legislative guide on an UNCITRAL limited liability organization, with a view to completing the first reading of the draft text.

V. Consideration of issues in the area of insolvency law

A. Finalization and adoption of the Model Law on the Recognition and Enforcement of Insolvency-Related Judgments and its guide to enactment

1. Introduction

113. The Commission recalled that, at its forty-seventh session, in 2014, it had approved a mandate for Working Group V (Insolvency Law) to develop a model law or model legislative provisions providing for the recognition and enforcement of insolvency-related judgments.[15] It also recalled that the Working Group had discussed

[14] Ibid., *Seventy-third Session, Supplement No. 17* (A/73/17), chapter IV, section B.

[15] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), para. 155.

that topic at its forty-sixth to fifty-third sessions (from 2014 to 2018),[16] and noted that, at its fifty-second session, the Working Group had requested the Secretariat to circulate the draft model law to States for comment (A/CN.9/931, para. 41).

114. The Commission had before it: (a) the reports of Working Group V (Insolvency Law) on the work of its fifty-second and fifty-third sessions (A/CN.9/931 and A/CN.9/937, respectively); (b) the draft Model Law on Recognition and Enforcement of Insolvency-Related Judgments (as contained in the annex to document A/CN.9/937); (c) the draft guide to enactment of the Model Law on Recognition and Enforcement of Insolvency-Related Judgments (A/CN.9/WG.V/WP.157); (d) a note by the Secretariat on amendments to the draft guide to enactment agreed by the Working Group at its fifty-third session (A/CN.9/955); and (e) a compilation of comments on the draft Model Law (A/CN.9/956, A/CN.9/956/Add.1, A/CN.9/956/Add.2 and A/CN.9/956/Add.3).

115. The Commission commenced with an article-by-article consideration of the draft Model Law and then took up the accompanying draft guide to enactment.

Article-by-article consideration

Preamble and articles 1 to 12, 14 and X

116. The Commission approved the preamble and articles 1 to 12, 14 and X as drafted.

Article 13. Grounds to refuse recognition and enforcement of an insolvency-related judgment

117. The Commission approved the following amendments to article 13:

(a) In subparagraph (a) (ii), adding the words "in this State" after the word "notified" and replacing the words "fundamental principles" with "the rules";

(b) In subparagraph (g) (ii), replacing the words "the defendant" with the words "that party".

118. A proposal was made to delete the words at the end of subparagraph (g) (ii), commencing with the word "unless". It was indicated that the text to be deleted might be superfluous as it was difficult to envisage a situation where the exclusion could be applied in practice. It was said that, if it was not possible to come up with a practical example, that phrase should be deleted. That proposal did not receive sufficient support. Proposals to delete subparagraph (h) in its entirety or to retain the chapeau but delete subparagraphs (h) (i) and (ii) were also made. Reference was made to document A/CN.9/956/Add.3 in that respect and it was stated that subparagraph (h) legitimized the exercise of insolvency jurisdiction in situations that were not widely accepted, such as situations where the exercise of court jurisdiction was based on the mere presence of the debtor's assets in the jurisdiction. In response it was stated that subparagraph (h) would provide a useful tool in the recovery of assets. The proposals to delete all or part of subparagraph (h) did not receive sufficient support.

119. The Commission heard another proposal to add a further subparagraph to article 13 along the following lines:

> (x) The judgment affects the rights of creditors in this State, who could have opened an insolvency proceeding in relation to the same debtor whose insolvency proceeding issued the insolvency-related judgment, and these creditors would be better off if the laws of this State apply, unless they have agreed to this treatment.

120. It was indicated that that additional subparagraph would complement article 13, subparagraph (f), as it would cover situations where adequate protection was not specifically requested but was nonetheless needed by creditors in the receiving State to ensure that they were not worse off than they would have been had they been

[16] For the reports of the Working Group on those sessions, see A/CN.9/829, A/CN.9/835, A/CN.9/864, A/CN.9/870, A/CN.9/898, A/CN.9/903, A/CN.9/931 and A/CN.9/937.

subject to local insolvency proceedings. In support of that proposal, reference was made to document A/CN.9/956/Add.3.

121. Various concerns were expressed, including: (a) the manner in which the new subparagraph would interact with other articles of the draft text, including article 13, subparagraph (f); (b) whether the provision was intended to apply only to States that had enacted the UNCITRAL Model Law on Cross-Border Insolvency (1997);[17] and (c) the breadth of the exception and, in particular, the possibility that the words "affects the rights of creditors" could lead to litigation to determine whether creditors were adversely affected by the judgment, and the delay that might be occasioned by that litigation to what was intended to be a straightforward and expeditious mechanism for the recognition of judgments. After discussion, the proposal did not receive sufficient support.

122. The Commission approved article 13 with the amendments noted in paragraph 117 above.

Article 15. Severability

123. A proposal to replace the word "shall" with "may" in draft article 15 did not receive sufficient support and the Commission approved article 15 as drafted.

3. Guide to enactment of the Model Law on Recognition and Enforcement of Insolvency-Related Judgments

Purpose and origin of the Model Law

Paragraph 8

124. A proposal to delete the last sentence of paragraph 8 did not received sufficient support.

Article 2. Definitions

Subparagraph 59 (d)

125. With reference to subparagraph 59 (d) of the draft guide, reference was made to the ongoing work of the Hague Conference on Private International Law on a global judgments convention. It was explained that, while a neutral approach was taken in subparagraph 59 (d) with respect to the applicability of the Model Law to judgments on causes of action arising prior to the commencement of insolvency proceedings, other international instruments might take a different approach. It was added that a reference to that approach could provide useful guidance to legislators and assist in ensuring consistency across international instruments. Suggestions were made to insert a reference in subparagraph 59 (d) to existing and future international agreements. In response, it was indicated that, on the one hand, legislators were usually not concerned with instruments not yet in force or still under negotiation and, on the other hand, States had to take into account their international obligations when making legislative decisions.

126. After discussion, the Commission agreed that the beginning of the second sentence of the paragraph should be revised to read "Enacting States will need" and that the following sentence should be inserted at the end of subparagraph 59 (d):

> "Enacting States may also wish to have regard to the treatment of such judgments under other international instruments."

Article 7. Public policy exception

Paragraph 70

127. It was indicated that, during the preparation of the model law, several reasons had been suggested to support the absence of a uniform definition of public policy in

[17] General Assembly resolution 52/158, annex.

the model law and that paragraph 70 seemed to be too narrow. It was suggested that the paragraph should be drafted in a more neutral manner and that a reference to the Model Law should be inserted. In response, it was indicated that the notion of public policy was general and not exclusive to the Model Law.

128. After discussion, the Commission agreed on the following text for paragraph 70:

> "The notion of public policy is grounded in national law and may differ from State to State. No uniform definition of that notion is attempted in article 7."

Article 13. Grounds to refuse recognition and enforcement of an insolvency-related judgment

Paragraph 105

129. Various proposals were made with respect to the last sentence of paragraph 105. In particular, it was suggested that there was a need to better explain the basis of the inconsistency arising under article 13, subparagraph (c), and the use of the phrase "mutually exclusive". After discussion, the Commission agreed to revise the final sentence of the paragraph as follows:

> "Under subparagraph (c), inconsistencies between judgments occur when findings of fact or conclusions of law, which are based on the same issues, are different."

4. Renumbering of the articles of the Model Law and finalization of the guide to enactment

130. The Secretariat was requested to renumber the articles of the Model Law and to edit and finalize the text of the guide to enactment in the light of the changes agreed to the text of article 13 (see para. 117 above). It was noted that the list of references to the discussion at UNCITRAL and in the Working Group in the guide to enactment would be updated.

5. Adoption of the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments and its guide to enactment

131. At its 1080th meeting, on 2 July 2018, after consideration of the text of the draft Model Law on Recognition and Enforcement of Insolvency-Related Judgments and the guide to enactment, the Commission adopted the following decision:

> *The United Nations Commission on International Trade Law*,
>
> *Recalling* General Assembly resolution 2205 (XXI) of 17 December 1966, in which the Assembly established the United Nations Commission on International Trade Law with the purpose of promoting the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,
>
> *Recognizing* that effective insolvency regimes are increasingly seen as a means of encouraging economic development and investment and of fostering entrepreneurial activity and preserving employment,
>
> *Convinced* that the law of recognition and enforcement of judgments is becoming more and more important in a world in which it is increasingly easy for enterprises and individuals to have assets in more than one State and to move assets across borders,
>
> *Considering* that international instruments on the recognition and enforcement of judgments in civil and commercial matters exclude insolvency-related judgments from their scope,
>
> *Concerned* that inadequate coordination and cooperation in cases of cross-border insolvency, including uncertainties associated with recognition and enforcement of insolvency-related judgments, can operate as an obstacle to the

fair, efficient and effective administration of cross-border insolvencies, reducing the possibility of rescuing financially troubled but viable businesses, making it more likely that debtors' assets are concealed or dissipated and hindering reorganizations or liquidations that would be the most advantageous for all interested persons, including the debtors, the debtors' employees and the creditors,

Convinced that fair and internationally harmonized legislation on cross-border insolvency that respects national procedural and judicial systems and is acceptable to States with different legal, social and economic systems would contribute to the development of international trade and investment,

Appreciating the support for and the participation of intergovernmental and invited non-governmental organizations active in the field of insolvency law reform in the development of a draft model law on recognition and enforcement of insolvency-related judgments and its guide to enactment,

Expressing its appreciation to Working Group V (Insolvency Law) for its work in developing the draft Model Law on Recognition and Enforcement of Insolvency-Related Judgments and its guide to enactment,

1. *Adopts* the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments, as it appears in annex III to the report of the United Nations Commission on International Trade Law on its fifty-first session,[18] and its guide to enactment, consisting of the text contained in A/CN.9/WG.V/WP.157, with the amendments listed in document A/CN.9/955 and the amendments adopted by the Commission at its fifty-first session;[19]

2. *Requests* the Secretary-General to publish the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments and its guide to enactment, including electronically, in the six official languages of the United Nations, and to disseminate it broadly to Governments and other interested bodies;

3. *Recommends* that all States give favourable consideration to the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments when revising or adopting legislation relevant to insolvency, and invites States that have used the Model Law to advise the Commission accordingly;

4. *Also recommends* that all States continue to consider implementation of the UNCITRAL Model Law on Cross-Border Insolvency (1997).[20]

B. Progress report of Working Group V

132. The Commission recalled that Working Group V, at its forty-fourth session, held in Vienna from 16 to 20 December 2013, had commenced its deliberations on a legislative text addressing the cross-border insolvency of enterprise groups. That text, which the Working Group had decided should be a model law, was likely to be available, together with a guide to enactment, for finalization and adoption by the Commission at its fifty-second session, in 2019. In addition, the Commission noted that a draft commentary and recommendations on the obligations of directors of enterprise group companies in the period approaching insolvency (which would supplement part four of the UNCITRAL Legislative Guide on Insolvency Law, dealing with obligations of directors in the period approaching insolvency, (2013)[21]) had been prepared and it was likely that the text could be finalized and adopted at the same time as the draft model law and guide to enactment on enterprise group insolvency.

---

[18] *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17* (A/73/17).

[19] Ibid., chapter V, subsection A.3.

[20] General Assembly resolution 52/158, annex.

[21] Available at www.uncitral.org/pdf/english/texts/insolven/Leg-Guide-Insol-Part4-ebook-E.pdf.

133. The Commission also took note that the Working Group, at its fifty-first session, held in New York from 10 to 19 May 2017, had commenced its deliberations on the insolvency of micro, small and medium-sized enterprises, based upon the provisions of the UNCITRAL Legislative Guide on Insolvency Law (2004)[22] and that that work was ongoing.

134. The Commission expressed its satisfaction with the progress of the work of the Working Group, in particular its management of parallel topics and the likelihood of completion of several texts so that they could be considered by the Commission at its fifty-second session, in 2019.

VI. Consideration of revised UNCITRAL texts in the area of privately financed infrastructure projects

135. At its forty-eighth and forty-ninth sessions, in 2015 and 2016, the Commission had reiterated its belief in the key importance of public-private partnerships to infrastructure and development.[23] The Commission had decided that the Secretariat should consider updating where necessary all or parts of the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects (2000),[24] and involve experts in the process.[25] At its fiftieth session, in 2017, the Commission had confirmed that the Secretariat (with the assistance of experts) should continue to update and consolidate the Legislative Guide, the accompanying Legislative Recommendations and the UNCITRAL Model Legislative Provisions on Privately Financed Infrastructure Projects (2003), and should report further to the Commission at its fifty-first session, in 2018.[26] The Secretariat had since organized and convened the Third International Colloquium on Public-Private Partnerships in Vienna on 23 and 24 October 2017.[27]

136. The Commission had before it a note by the Secretariat setting out the proposals of the Secretariat on both the scope and nature of the proposed amendments to the UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, as well as the process for implementing them (A/CN.9/939). Revised drafts of the introduction and of chapters I, II and III of the Legislative Guide reflecting the changes proposed by the Secretariat were contained in A/CN.9/939/Add.1, A/CN.9/939/Add.2 and A/CN.9/939/Add.3, for review and consideration by the Commission.

137. The Commission took note of the general policy proposals for amending the Legislative Guide, as well as the specific amendments proposed by the Secretariat in the revised drafts of the introduction and of chapters I, II and III. The Commission endorsed the general policy proposals for amending the Legislative Guide. The Commission also approved in principle the nature of the amendments proposed by the Secretariat, subject to specific comments and further adjustments that might be proposed in the course of the consultations with experts that the Commission encouraged the Secretariat to pursue with a view to submitting to the Commission the complete set of all draft revised chapters of the Guide, to be renamed the UNCITRAL Legislative Guide on Public-Private Partnerships, for consideration and adoption at its fifty-second session, in 2019.

---

22 Available at www.uncitral.org/uncitral/en/uncitral_texts/insolvency/2004Guide.html.

23 *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 363; and ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 360 and 362.

24 United Nations publication, Sales No. E.01.V.4.

25 *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17), para. 362.

26 Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 448.

27 The documents presented at the colloquium and a summary report of the discussions are available in English at the colloquium website (www.uncitral.org/uncitral/en/commission/colloquia/public-private-partnerships-2017.html).

VII. Investor-State dispute settlement reform: progress report of Working Group III

138. The Commission recalled that, at its fiftieth session, in 2017, it had approved a mandate for Working Group III to work on the possible reform of investor-State dispute settlement. It further recalled that the Working Group was, in discharging that mandate and in line with the UNCITRAL process, to ensure that the deliberations, while benefiting from the widest possible breadth of available expertise from all stakeholders, would be Government-led, with high-level input from all Governments, consensus-based and fully transparent.[28]

139. The Commission had before it the reports of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth and thirty-fifth sessions (A/CN.9/930/Rev.1, A/CN.9/930/Add.1/Rev.1 and A/CN.9/935).

140. The Commission noted the discussions of the Working Group, which had focused on the first stage of its mandate (to identify and consider concerns regarding investor-State dispute settlement).

141. Recalling that the process should be Government-led, the Commission welcomed the participation of 80 States and 35 intergovernmental organizations and invited non-governmental organizations in the thirty-fourth session and of 84 States and 50 organizations in the thirty-fifth session of the Working Group.

142. In that context, the Commission expressed its appreciation for the contributions to the UNCITRAL trust fund from the European Union and the Swiss Agency for Development and Cooperation, aimed at allowing the participation of representatives of developing States in the deliberations of the Working Group (see also para. 191 below), and was informed about ongoing efforts by the Secretariat to secure additional voluntary contributions. States were urged to support those efforts.

143. The Commission welcomed the outreach activities of the Secretariat aimed at raising awareness about the work of the Working Group and ensuring that the process would remain inclusive and fully transparent. The Commission noted the engagement of the Working Group, and of the Secretariat, with diverse stakeholders, including intergovernmental organs and organizations such as UNCTAD, the World Trade Organization (WTO), the Organization for Economic Cooperation and Development (OECD), the International Centre for the Settlement of Investment Disputes and PCA.

144. The Commission expressed its appreciation for the provision of information by various stakeholders to assist the Working Group in its deliberations, as well as for proposals by an academic forum and a group of practitioners to make information from their research and experience available to the Working Group.

145. After discussion, the Commission expressed its satisfaction with the progress made by the Working Group and the support provided by the Secretariat. The Commission noted that the Working Group would continue its deliberations pursuant to the mandate given to it, allowing sufficient time for all States to express their views, but without unnecessary delay.

146. The Commission also welcomed the invitation of the Republic of Korea to a regional intersessional meeting on investor-State dispute settlement reform to be held in Incheon on 10 and 11 September 2018. The Commission took note that, while it was clear that no decisions would be taken at the intersessional meeting, the event would provide an open forum for high-level Government representatives and relevant stakeholders in the Asia-Pacific region to discuss issues being deliberated by Working Group III. (For further discussions of methods of work relevant to Working Group III, see paras. 269 and 270 below.)

---

[28] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), para. 264.

VIII. Electronic commerce: progress report of Working Group IV

147. The Commission recalled that, at its forty-ninth session, in 2016, it had mandated Working Group IV (Electronic Commerce) to take up work on the topics of identity management and trust services, and cloud computing, upon completion of the work on the Model Law on Electronic Transferable Records. In that context, the Secretariat, within its existing resources, and the Working Group had been asked to continue to update and conduct preparatory work on the two topics, including their feasibility, in parallel and in a flexible manner and to report back to the Commission so that it could make an informed decision at a future session, including on the priority to be given to each topic.[29]

148. The Commission also recalled that, at its fiftieth session, in 2017, having considered the reports of the Working Group on the work of its fifty-fourth and fifty-fifth sessions, it had recognized that, until the following session of the Commission, in 2018, both the Secretariat and the Working Group would be able to handle the projects on cloud computing, identity management and trust services in parallel. The Commission had therefore reaffirmed the mandate given to the Working Group at its forty-ninth session, in 2016, and agreed to revisit that mandate at its fifty-first session, in particular if the need arose to prioritize between the topics or to give a more specific mandate to the Working Group as regards its work in the area of identity management and trust services.[30]

149. The Commission had before it the report of the Working Group on its fifty-sixth session, held in New York from 16 to 20 April 2018 (A/CN.9/936).

150. The Commission considered the recommendation of the Working Group that the Commission should review the draft notes on the main issues of cloud computing contracts at its fifty-second session, in 2019, and authorize its publication or issuance in the form of an online reference tool, in both cases as a work product of the Secretariat (A/CN.9/936, para. 44). After discussion, the Commission decided to review the draft notes on the main issues of cloud computing contracts at its fifty-second session, in 2019.

151. The Commission also considered the suggestion by the Secretariat and discussed by the Working Group that the notes on the main issues of cloud computing contracts could be prepared as an online reference tool (A/CN.9/936, paras. 16 and 17). The Commission took note of the recommendation of the Working Group that the Commission should request the Secretariat to prepare a note setting out considerations relating to the preparation of the suggested online reference tool (A/CN.9/936, para. 17).

152. Broad support was expressed for developing new forms of electronic publication that could more effectively reach users and ultimately increase the relevance of UNCITRAL texts, especially non-legislative texts. The possible use of an online tool to present the outcome of the work on a practice guide on security interests as well as of the work on a guidance document on international commercial contracts (with a focus on sales), conducted jointly with the Hague Conference on Private International Law and Unidroit, was mentioned.

153. It was indicated that the notion of an online tool could be interpreted in different ways; the envisaged features of the online tool should therefore be clarified. Various concerns were expressed, including about how the online tool would address multilingualism, how users and the tool would interact, and the availability of financial and human resources. It was suggested that the Commission could benefit from piloting the use of an online tool.

154. It was noted that, since the structure and content of each non-legislative text varied, they might need to be presented online in different ways. The suggestion was made that Working Group VI (Security Interests) could consider how the practice

[29] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), para. 235.

[30] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 127.

guide on security interests might be presented, and that other working groups may also make useful contributions. States and other entities were invited to share their experience, expertise and, when possible, resources in designing and deploying online tools relating to legal texts.

155. After discussion, the Commission requested the Secretariat to prepare, within existing resources, a pilot online tool containing the draft notes on the main issues of cloud computing contracts, for consideration at its fifty-second session, in 2019. The Commission also requested the Secretariat to prepare a note illustrating the considerations relating to the preparation of the pilot online tool, including budgetary and other implications, and departure from the existing UNCITRAL publication policy.

156. The Commission considered the recommendation of the Working Group that it should request the Working Group to conduct work on legal issues relating to identity management and trust services with a view to preparing a text aimed at facilitating cross-border recognition of identity management and trust services, on the basis of the principles and discussing the issues identified by the Working Group at its fifty-sixth session (A/CN.9/936, para. 95).

157. Broad support was expressed for requesting the Working Group to conduct work on legal issues relating to identity management and trust services in the light of the fundamental importance of that topic for the global digital economy.

158. It was indicated that, while the issues identified by the Working Group at its fifty-sixth session could provide a useful starting point for its deliberations, the mandate of the Working Group should not be restricted to those issues since the flexibility provided by a broader mandate was desirable. It was also indicated that the Working Group should, to the extent possible, expedite its work on substantive matters.

159. After discussion, the Commission requested Working Group IV to conduct work on legal issues relating to identity management and trust services with a view to preparing a text aimed at facilitating cross-border recognition of identity management and trust services, on the basis of the principles and issues identified by the Working Group at its fifty-sixth session (A/CN.9/936, paras. 61–94).

160. With respect to ongoing work in the field of paperless trade facilitation, including electronic cross-border single window facilities,[31] the Commission was informed that the Secretariat was carrying out that work in cooperation with the Economic Commission for Europe (ECE), the Economic and Social Commission for Asia and the Pacific and other international governmental and non-governmental organizations.

IX. Security interests: progress report of Working Group VI

161. The Commission recalled that, at its fiftieth session, in 2017, it had decided that the Working Group should prepare a practice guide to the UNCITRAL Model Law on Secured Transactions. At that session, it was agreed that issues addressed in document A/CN.9/926 and the relevant sections of document A/CN.9/913 should form the basis of that work.[32] It was widely felt that, to be able to use a law implementing the UNCITRAL Model Law on Secured Transactions to their benefit, parties to transactions, judges, arbitrators, regulators, insolvency administrators and academics would need guidance with respect to contractual, transactional and regulatory issues, as well as issues relating to the financing of micro-businesses. The Commission further recalled that it had given broad discretion to the Working Group in determining the scope, structure and content of the practice guide.[33]

162. The Commission considered the reports of the Working Group on the work of its thirty-second session, held in Vienna from 11 to 15 December 2017 (A/CN.9/932),

[31] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 240.

[32] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 227.

[33] Ibid., paras. 222, 223 and 227.

and its thirty-third session, held in New York from 30 April to 4 May 2018 (A/CN.9/938). The Commission noted the Working Group's preliminary discussions on the intended audience, scope, structure, style and overall content of the draft practice guide, which formed the basis of the first draft. The Commission also noted that the Working Group, at its thirty-third session, had completed its first reading of the draft practice guide, and expressed support for the Working Group to continue its work.

163. After discussion, the Commission expressed its satisfaction with the progress made by the Working Group and noted the Secretariat's efforts to coordinate with the Basel Committee on Banking Supervision with respect to the regulatory aspects. Considering the progress made, the Commission requested the Working Group to complete the work expeditiously, with a view to presenting a final draft to the Commission for consideration at its fifty-second session, in 2019. (See paras. 152 and 154 above on the issues also relevant to the work of Working Group VI.)

X. Celebration of the sixtieth anniversary of the New York Convention

A. Celebratory event

164. The Commission held a celebratory event to mark the sixtieth anniversary of the New York Convention. In addition to the representatives of member States of the Commission and observers, some 300 persons were invited to participate in the event.

165. In the opening statements, it was pointed out that the almost universal acceptance of the New York Convention brought legal certainty to business operations worldwide, thereby contributing to decreasing the level of risk and transactional costs associated with international trade. It was said that the implementation of the New York Convention was an important indicator of a sound business and investment environment. Further, it was pointed out that acceptance of the Convention was a demonstration of States' strong commitment to the rule of law and represented a step towards better access to justice for economic operators. Adoption and proper implementation of the Convention were regarded as furthering progress towards achieving the Sustainable Development Goals. The Convention, by establishing a fundamental legal framework for the use of arbitration and its effectiveness, had strengthened respect for binding commitments, inspired confidence in the rule of law and ensured fair treatment in the resolution of disputes arising over contractual rights and obligations.

166. The celebratory event provided an opportunity to consider how the mandate of UNCITRAL contributed in general to the successful development of the international arbitration framework, with the New York Convention as a foundational instrument.

167. The first panel discussion was focused on cooperation and coordination activities. Representatives of international organizations and governmental cooperation agencies provided insights into the role of their organizations in the promotion of the New York Convention. It was underlined that international organizations had developed specific expertise, and cooperation among organizations was key to strengthening the international framework that had been built over the years.

168. The second panel discussion addressed the relation between domestic legislative frameworks on the recognition and enforcement of foreign arbitral awards and the New York Convention; the relevance of the law reform process and the role of article VII of the New York Convention in the development of the international arbitration framework was highlighted. On that point, it was observed that the New York Convention set a maximum level of control that contracting States might exert over arbitral awards, but they remained free to apply more liberal rules than those provided in the Convention. It was said that article VII had enabled contracting States to adapt to the development of international arbitration for the past 60 years.

169. The celebratory event also provided an opportunity to highlight the importance of adequate legislative implementation and judicial application of the New York

Convention. In that context, the *UNCITRAL Secretariat Guide on the New York Convention* and the web platform (www.newyorkconvention1958.org) created to publish both the Guide and the resources on which it was based electronically were presented as the most comprehensive freely accessible resource on the Convention. Other initiatives were presented, such as the ICC Guide to national procedures for recognition and enforcement of awards under the New York Convention and the International Council for Commercial Arbitration Guide to the interpretation of the New York Convention.

170. The celebratory event ended with a panel on instruments recently finalized and adopted by UNCITRAL to strengthen the framework for alternative dispute resolution. Regarding mediation, it was highlighted that while the finalized draft convention on international settlement agreements resulting from mediation and the UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (see chapter III above) were mainly intended for the private sector, enforcement of international mediated settlements was a sensitive policy issue for many States, as evidenced by the many responses submitted by States to the initial questionnaire sent by the Secretariat before the commencement of work. Hope was expressed that the instruments on mediation would be widely adopted, and that the draft convention would be as successful as the New York Convention and would become a cornerstone in the field of alternative dispute settlement. To end, the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration was presented as a first step in addressing concerns in investor-State dispute settlement.

171. The celebratory event also included an evening reception where the international arbitration community gathered to celebrate the sixtieth anniversary of the Convention. The reception was jointly organized by the Commission and the International Court of Arbitration of ICC, hosted by the United States District Court for the Southern District of New York. A number of organizations representing the international arbitration community supported the event, including IBA, the New York State Bar Association, AAA/ICDR, the Chartered Institute of Arbitrators (CIArb), the Centre for Dispute Resolution and JAMS.

172. The Commission commended the Secretariat for the organization of the celebratory event, and the opportunity to reflect on the implementation of the UNCITRAL mandate in relation to the New York Convention. It requested the Secretariat to publish the conference proceedings electronically and to disseminate the publication broadly to any interested bodies.

B. Decision of the Commission

173. At its 1076th meeting, on 28 June 2018, the Commission adopted by consensus the following decision:

The United Nations Commission on International Trade Law,

Recalling the adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[34] on 10 June 1958 by the United Nations Conference on International Commercial Arbitration,

Recalling also General Assembly resolution 2205 (XXI) of 17 December 1966, in which the Assembly established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

[34] United Nations, *Treaty Series*, vol. 330, No. 4739.

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the Convention, by establishing a fundamental legal framework for the use of arbitration and its effectiveness, has strengthened respect for binding commitments, inspired confidence in the rule of law and ensured fair treatment in the resolution of disputes arising over contractual rights and obligations,

Recalling General Assembly resolution 62/65 of 6 December 2007, in which the Assembly requested the Secretary-General to increase efforts to promote wider adherence to the Convention and its uniform interpretation and effective implementation,

Taking note of the UNCITRAL Secretariat Guide on the New York Convention, which is aimed at assisting in the dissemination of information on the Convention and further promoting its effective implementation,

Expressing its hope that States that are not yet parties to the Convention will soon become parties thereto, which would ensure that the legal certainty afforded by the Convention is universally enjoyed, decreasing the level of risk and transactional costs associated with doing business and thus promoting international trade,

1. *Welcomes* the initiatives being undertaken by various organs and agencies within and outside the United Nations system to organize conferences, judicial workshops and other similar events to provide a forum for an exchange of views on experiences worldwide with the implementation of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards;[35]

2. *Encourages* the use of these events for the promotion of wider adherence to the Convention and greater understanding of its provisions and their uniform interpretation and effective implementation;

3. *Invites* all States that have not yet done so to consider becoming parties to the Convention.

XI. Coordination and cooperation

A. General

174. The Commission had before it a note by the Secretariat (A/CN.9/948) providing information on the activities of international organizations active in the field of international trade law in which the Secretariat had participated since the last note to the Commission (A/CN.9/908). The Commission expressed appreciation for the Secretariat engaging with a high number of organizations and entities, both within and outside the United Nations system. Among others, the Secretariat had participated in the activities of the following: UNCTAD, ECE, United Nations Inter-Agency Cluster on Trade and Productive Capacity, Inter-Agency Task Force on Financing for Development, World Bank, Hague Conference on Private International Law, OECD, Unidroit, WTO, Asia-Pacific Economic Cooperation (APEC), European Commission, Basel Committee on Banking Supervision and ILI.

[35] Ibid.

175. In particular, the Commission noted with satisfaction the coordination activities involving the Hague Conference on Private International Law, particularly with respect to its work on judgments, and Unidroit.

176. The Commission heard an oral report on the preparation of a guidance document in the area of international commercial contract law (with a focus on sales) in coordination with the Hague Conference on Private International Law and with Unidroit.[36] It was indicated that an initial draft was being prepared with the help of experts and that it would be informally circulated to stakeholders. It was added that, according to the envisaged timeline, the document should be finalized in 2020, on the occasion of the fortieth anniversary of the United Nations Convention on Contracts for the International Sale of Goods (1980).

177. Broad appreciation was expressed for the joint project. It was said that such a project was particularly useful for illustrating the coordination among uniform law instruments. Cooperation allowed for efficient allocation of resources. It was indicated that the project contributed to ensuring the visibility of UNCITRAL, which, in turn, was important for it to carry out its coordination mandate effectively. However, it was added that work on the project should be balanced with the needs of UNCITRAL legislative activities. The Commission encouraged the Secretariat to continue its collaboration with the Hague Conference on Private International Law and Unidroit on that project.

178. The Commission noted that the coordination work of the Secretariat concerned topics currently being considered by the working groups, as well as topics related to texts already adopted by the Commission, and that the Secretariat had participated in expert groups, working groups and plenary meetings with the purpose of sharing information and expertise and avoiding duplication of work in the resultant work products.

179. The Commission observed that coordination work often involved travel to meetings of the different organizations concerned and the use of funds allocated for official travel. The Commission reiterated the importance of such work being undertaken by UNCITRAL as the core legal body in the United Nations system in the field of international trade law and supported the use of travel funds for that purpose.

B. Reports of other international organizations

180. The Commission took note of statements made on behalf of international and regional organizations invited to the session.

1. Permanent Court of Arbitration

181. The representative of PCA made a statement providing a summary of the work of PCA during the period 2017–2018, including an update on the provision of registry support in a number of different arbitration and conciliation proceedings, its role as an appointing authority and, in particular, its experience with the operation of the UNCITRAL Arbitration Rules and some novel ways in which they had recently been used. PCA had increased its technical contribution to discussions in Working Group III on investor-State dispute settlement reform, including information on costs and appointment and challenges of arbitrators.

2. Organization of American States

182. The representative of OAS recalled the general mandate received from the OAS General Assembly to promote a greater dissemination of private international law among its member States, in collaboration with other organizations and associations that worked in that area; UNCITRAL, the Hague Conference on Private International

[36] *Official Records of the General Assembly, Seventy-first Session, Supplement No. 17* (A/71/17), para. 281.

Law, Unidroit and the American Association of Private International Law had been identified in particular. The OAS General Assembly had also instructed the secretariat to: (a) continue promoting the UNCITRAL Model Law on Secured Transactions among member States (the Model Law had been adopted at the Inter-American Specialized Conference on Private International Law held in 2002, and the accompanying Model Regulations had been adopted at the Inter-American Specialized Conference on Private International Law held in 2009); (b) extend the training for judges and other public officials on the effective implementation of international treaties on enforcing decisions and arbitral awards; and (c) disseminate the OAS Model Law on the Simplified Corporation. Lastly, at its most recent session, in June 2018, the OAS General Assembly had requested the Inter-American Juridical Committee to update its 2016 report on principles for electronic warehouse receipts for agricultural products in the light of developments that had occurred since those principles were adopted.

183. The representative of OAS also informed the Commission about the activities of the Inter-American Juridical Committee and the instruments it had produced in areas of interest for UNCITRAL, highlighting the importance of the ongoing work on drafting a guide to the law applicable to international contracts, and a set of draft principles on electronic warehouse receipts for agricultural products. In those and other areas, the OAS secretariat looked forward to a continuation of its fruitful cooperation with UNCITRAL.

C. International governmental and non-governmental organizations invited to the sessions of UNCITRAL and its working groups

184. The Commission recalled that, at its forty-fourth session to fiftieth sessions, from 2011 to 2017, it had heard oral reports by the Secretariat about intergovernmental organizations and non-governmental organizations (NGOs) invited to sessions of UNCITRAL.[37] At its forty-eighth session, in 2015, it had requested the Secretariat, when presenting its oral report on the topic of organizations invited to sessions of UNCITRAL, to provide comments on the manner in which invited organizations fulfilled the criteria applied by the Secretariat in making its decision to invite NGOs.[38] At its forty-ninth session, in 2016, the Commission had welcomed the detailed and informative report presented by the Secretariat pursuant to that request.[39] At its fiftieth session, in 2017, the Commission had requested the Secretariat to provide information about organizations invited to sessions of UNCITRAL in writing for future sessions.[40]

185. The Commission had before it a note submitted pursuant to the request made by the Commission at its fiftieth session (A/CN.9/951). The note presented information about the newly accepted organizations and those whose applications had been declined between the start of the fiftieth session of UNCITRAL and 28 May 2018. The Commission noted the establishment of a separate list of additional NGOs invited only to sessions of Working Group III (Investor-State Dispute Settlement Reform) for its work on issues of investor-State dispute settlement reform, the reasons for establishing that list and the NGOs included in that list.

186. The Commission took note of the request submitted by Public Citizen, an NGO interested in participating as an observer in sessions of Working Group III, but which the Secretariat had not found to be international in membership and focus or to

[37] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 288–298; ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 174–178; ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 257–261; ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 205–207; ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 279–281; ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 286–290; and ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), paras. 360–364.

[38] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 280.

[39] Ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), para. 290.

[40] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 364.

possess demonstrated international expertise in the area of work currently dealt with by Working Group III, for a reconsideration of that decision (A/CN.9/951, para. 5 (d)). The Commission confirmed the decision of the Secretariat in that case.

XII. Technical assistance to law reform

A. General

187. The Commission had before it a note by the Secretariat (A/CN.9/958/Rev.1) on technical cooperation and assistance activities undertaken in the period since the last report to the Commission in 2017 (A/CN.9/905). The Commission stressed that technical cooperation and assistance activities continued to be an important part of the Secretariat's activities in order to ensure that the legislative texts developed and adopted by the Commission were enacted or adopted by States and applied and interpreted in a uniform manner to promote the basic goal of harmonization of international trade law. The technical assistance and cooperation activities of the Secretariat included (a) providing States with information necessary to allow them to enact the various texts developed or adopted by UNCITRAL, including technical information, information and advice on practical experience in the enactment of UNCITRAL texts, (b) providing assistance to the drafting of laws and regulations enacting UNCITRAL texts, including information and advice on interpretation and implementation of texts, and (c) providing capacity-building for law reform and the interpretation and application of UNCITRAL texts. The Commission acknowledged that development of legislative texts was only the first step in the process of trade law harmonization and that technical cooperation and assistance activities were vital to the further use, adoption and interpretation of those legislative texts. The Commission expressed its appreciation for the work undertaken by the Secretariat in that regard. At the same time, the Commission recalled that the main mandate of the Secretariat was to support the Commission's legislative work and encouraged the Secretariat to ensure that human resources allocated to technical assistance would not adversely affect the servicing of the Commission and its working groups.

188. The Commission noted that the continuing ability to respond to requests from States and regional organizations for these activities was dependent upon the availability of funds to meet the associated costs. With respect to the Trust Fund for UNCITRAL Symposia, the Commission acknowledged the contribution by the Republic of Korea to support participation in the APEC Ease of Doing Business project (as noted in A/CN.9/958/Rev.1, paras. 10 and 52). The Commission further noted that, despite efforts by the Secretariat to solicit new donations, funds available in the Trust Fund for UNCITRAL Symposia were very limited. Accordingly, requests for technical cooperation and assistance activities continued to be very carefully considered, and the number of such activities, which of late had mostly been carried out on a cost-share or no-cost basis, was limited. The Commission requested the Secretariat to continue exploring alternative sources of extrabudgetary funding, in particular by more extensively engaging permanent missions, as well as other possible partners in the public and private sectors, subject to relevant United Nations rules and regulations on fundraising and relations with the private sector. The Commission also encouraged the Secretariat to seek cooperation and partnership with international organizations, including through regional offices, and bilateral assistance providers in the provision of technical assistance, and appealed to all States, international organizations and other interested entities to facilitate such cooperation and take any other initiative to maximize the use of relevant UNCITRAL standards in law reform. In that connection, the Commission expressed the wish that the Secretariat would be able to maintain a neutral and independent approach to technical assistance, consistent with the policies of the Commission, bearing in mind that potential donors, including national development agencies, might have their own priority or policy considerations.

189. The Commission reiterated its call for all States, international organizations and other interested entities to consider making contributions to the Trust Fund for UNCITRAL Symposia, if possible in the form of multi-year contributions or as specific-purpose contributions, in order to facilitate planning and enable the secretariat to meet the increasing number of requests for technical cooperation and assistance activities.

190. With respect to the Trust Fund for Granting Travel Assistance to Developing States Members of UNCITRAL, the Commission appealed to the relevant bodies of the United Nations system, organizations, institutions and individuals to make voluntary contributions to the Trust Fund. The Commission noted that the available Trust Fund resources had been used to facilitate participation at the fifty-first session of the Commission for one delegate from Honduras. Owing to the limited resources, only partial assistance could be provided.

191. The Commission further noted that the European Union and Swiss Agency for Development and Cooperation had made resources available to provide financial support for the participation of developing countries in Working Group III (Investor-State Dispute Settlement Reform), which had been used to facilitate participation at the thirty-fifth session of Working Group III (New York, 23–27 April 2018) for delegates from El Salvador and Sri Lanka, as the agreement between the United Nations and the European Union also covered the funding of travel for States that are not currently members of UNCITRAL.

192. The Commission commended the Secretariat for organizing a round table on technical assistance at the Commission's 1084th meeting, on Friday, 6 July. The round table brought together governmental and intergovernmental organizations active in international development assistance to explore synergies and discuss ways to further cooperate with the Secretariat in implementing sound reforms of international trade law. The presentations made at the round table and the discussion that took place thereafter offered valuable insights into needs for commercial law reform, the tools and methods for enhancing delivery of law reform projects and the means for evaluating their effectiveness. The Commission expressed its appreciation to the experts who had participated in the round table.

193. With regard to the dissemination of information on the work and texts of UNCITRAL, the Commission noted the important role played by the UNCITRAL website (www.uncitral.org) and the UNCITRAL Law Library. The Commission welcomed the inclusion on the UNCITRAL website of a feature highlighting the role of UNCITRAL in supporting the Sustainable Development Goals.[41] The Commission recalled its request that the Secretariat continue to explore the development of new social media features on the UNCITRAL website as appropriate,[42] noting that the development of such features in accordance with the applicable guidelines was also welcomed by the General Assembly.[43] In that regard, the Commission noted with approval the continued development of the "What's new at UNCITRAL?" Tumblr microblog[44] and the establishment of an UNCITRAL presence on LinkedIn.[45] Finally, recalling the General Assembly resolutions commending the website's six-language interface,[46] the Commission requested the Secretariat to continue to provide, via the website, UNCITRAL texts, publications, and related information, in a timely manner and in the six official languages of the United Nations.

---

[41] Available from www.uncitral.org/uncitral/about/SDGs/Sustainable_Development_Goals.html.

[42] *Official Records of the General Assembly, Seventieth Session, Supplement No. 17* (A/70/17), para. 247.

[43] General Assembly resolutions 69/115, para. 21; 70/115, para. 21; 71/135, para. 23; and 72/113, para. 29.

[44] Available from http://uncitral.tumblr.com.

[45] Available from www.linkedin.com/company/uncitral.

[46] General Assembly resolutions 61/32, para. 17; 62/64, para. 16; 63/120, para. 20; 69/115, para. 21; 70/115, para. 21; 71/135, para. 23; and 72/113, para. 29.

B. UNCITRAL regional presence

194. The Commission had before it a note by the Secretariat on the activities undertaken by its Regional Centre for Asia and the Pacific (A/CN.9/947) in the period since the last report to the Commission in 2017 (A/CN.9/910).

195. The Commission acknowledged the noticeable progress, as a result of the regional activities of the Secretariat, through its Regional Centre, in the levels of awareness, adoption and implementation of harmonized and modern international trade law standards elaborated by UNCITRAL, and emphasized the significance of the Regional Centre in mobilizing contributions to the work of UNCITRAL from the Asia-Pacific region.

196. The Commission noted that the Regional Centre was staffed by one professional, one programme assistant, one team assistant and two legal experts, and that its core project budget allowed for the occasional employment of experts and consultants. During the reporting period, the Regional Centre had received 15 interns. The Commission also noted that the Regional Centre relied on the annual financial contribution to the Trust Fund for UNCITRAL Symposia to meet the costs of operations and programmes. The Commission expressed its gratitude to the Incheon Metropolitan City for extending its financial contribution over a five-year period (2017–2021) for the operation of the Regional Centre, revising the annual contribution to $450,000. The Commission further expressed its gratitude to the Ministry of Justice of the Republic of Korea and to the government of the Hong Kong Special Administrative Region of China for the extension of their contribution of two legal experts on non-reimbursable loans.

197. The Commission commended the Regional Centre for having continued to deliver its flagship activities during the reporting period, namely the second edition of the UNCITRAL Asia Pacific Judicial Summit (Hong Kong, China, 16–18 October 2017), the Asia Pacific Alternative Dispute Resolution Conference (Seoul, 7–9 November 2017) and the UNCITRAL Asia Pacific Day held by various universities during the last quarter of 2017 with the objective of streamlining activities to promote UNCITRAL texts and establishing regular opportunities for substantive regional contributions to support the present and possible future legislative work of UNCITRAL.

198. The Commission noted with appreciation the various public, private and civil society initiatives that the Regional Centre had organized or supported, or in which, through either Incheon-based staff or Vienna-based secretariat staff, it had participated during the reporting period. The Commission further noted with appreciation that the Regional Centre, in consultation and with the support of Vienna-based secretariat staff had also been engaged in the technical assistance and capacity-building services, provided to States in the Asia-Pacific region and to international and regional organizations and development banks.

199. The Commission encouraged the Secretariat to continue seeking cooperation, including through formal agreements, with regional stakeholders, including development banks, to ensure coordination and funding for its technical assistance and capacity-building activities and services aimed at promoting the adoption of UNCITRAL texts in the region.

200. The delegate of Cameroon informed the Commission that, since the announcement of its intention to host an UNCITRAL regional centre for Africa, at the Commission's fiftieth session, in 2017,[47] the Government of Cameroon had continued to examine the financial implications and the feasibility of establishing a UNCITRAL regional centre in the country. The Commission reiterated its gratitude to the Government of Cameroon for actively pursuing that matter, and encouraged the Secretariat to continue its consultations and consider carefully the level of human

[47] *Official Records of the General Assembly, Seventy-second Session, Supplement No. 17* (A/72/17), para. 292.

resources that the Secretariat would need for the efficient management of any new regional centre and for ensuring adequate supervision by, and coordination with, Vienna-based secretariat staff.

XIII. Status and promotion of UNCITRAL legal texts

A. General discussion

201. The Commission considered the status of the conventions and model laws emanating from its work and the status of the New York Convention, on the basis of a note by the Secretariat (A/CN.9/950). It was noted that certain States had adopted more than one UNCITRAL text in the framework of a comprehensive exercise on commercial law modernization. The Commission noted with appreciation the information on treaty actions and legislative enactments received since its fiftieth session and invited States to share with the Secretariat information on the enactment of UNCITRAL texts.

202. The Commission also noted the following actions and legislative enactments made known to the Secretariat subsequent to the submission of the Secretariat's note:

(a) Mauritius Convention on Transparency: ratification by Cameroon (four States parties);

(b) UNCITRAL Model Law on Cross-Border Insolvency (1997): new legislation based on the Model Law had been adopted in Israel;

(c) UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006: legislation based on the Model Law had been adopted in British Columbia, Canada.

203. The Commission expressed appreciation to the General Assembly for the support it provided to UNCITRAL in its activities and in particular its distinct role in furthering the dissemination of international commercial law. In particular, the Commission referred to the long-established practice of the General Assembly, upon acting on UNCITRAL texts, to recommend to States to give favourable consideration to UNCITRAL texts and to request the Secretary-General to publish UNCITRAL texts, including electronically, in the six official languages of the United Nations, and take other measures to disseminate UNCITRAL texts as broadly as possible to Governments and all other relevant stakeholders.

B. Functioning of the transparency repository

204. The Commission recalled that the repository of published information under the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Transparency Rules"), adopted at its forty-sixth session in 2013, had been established under article 8 of the Transparency Rules ("transparency repository"). The Commission also recalled reports on the transparency repository that had been provided at its previous sessions.[48]

205. The Commission recalled that, following ratification by Mauritius, Canada and Switzerland (listed in the chronological order of ratification), the Mauritius Convention on Transparency entered into force on 18 October 2017. It also noted that since that date, Cameroon had ratified the Convention (see para. 202 (a) above). The Commission noted that none of the ratifying States had made reservations and, as a result, the Transparency Rules were part of the investor-State dispute settlement regime created by investment treaties concluded by those four States. Thus, the

[48] Ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 107–110; ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 152–161; ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 166–173; and ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), paras. 308–321.

Transparency Rules apply on a unilateral basis, under all treaties concluded by those States, if the claimant agrees to their application.

206. The Commission reiterated its appeal to all States, international organizations and other interested entities to consider making contributions to the funding of the project, preferably in the form of multi-year contributions, so as to facilitate its continued operation. It expressed its gratitude to the European Commission for its continuing financial commitment and to the Fund for International Development (OFID) of the Organization of the Petroleum Exporting Countries for its recent offer of additional funds.

207. The Commission recalled that a certain number of projects and activities taking place throughout the year in which the UNCITRAL transparency standards were promoted, strengthen the trend in investor-State dispute settlement towards increased transparency. For instance, the Commission heard about several academic programmes, including moots, where around 4,000 students were able to become familiar with the UNCITRAL transparency standards. In addition, the Commission was informed about the continuation of the 18-month project under the overall project "Open regional fund: legal reform", conducted by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), which was a key element of the promotion of the UNCITRAL transparency standards in South-Eastern Europe.

208. The Commission welcomed the report on the transparency repository and expressed its support for continued operation of the repository as a key mechanism for promoting transparency in investor-State arbitration.

C. International commercial law moot competitions

1. Willem C. Vis International Commercial Arbitration Moot

209. The Commission noted that the Association for the Organization and Promotion of the Willem C. Vis International Commercial Arbitration Moot had organized the Twenty-fifth Moot, the oral arguments phase of which had taken place in Vienna from 24 to 29 March 2018, and that the best team in oral arguments had been the National Research University Higher School of Economics of Moscow. As in previous years, the Moot had been co-sponsored by the Commission. Legal issues addressed by the teams in the Twenty-fifth Moot were based on the United Nations Sales Convention and the UNCITRAL Arbitration Rules.

210. A total of 362 teams from 82 countries participated in the 2018 Vis Moot, comprising more than 2,000 students, 1,000 arbitrators and 700 coaches. It was stressed that Vis Moot contributed to promoting cultural diversity and improving gender representation in international arbitration, both important aspects in increasing the credibility and acceptance of international arbitration. The oral arguments phase of the Twenty-sixth Willem C. Vis International Commercial Arbitration Moot were to be held in Vienna from 12 to 18 April 2019.

211. It was also noted that the Vis East Moot Foundation had organized the Fifteenth Willem C. Vis (East) International Commercial Arbitration Moot, which had been co-sponsored by the Commission. The final phase took place in Hong Kong, China, from 11 to 18 March 2018. A total of 125 teams from 31 jurisdictions participated in the Fifteenth (East) Moot and the best team in oral arguments had been ILS Law College (India). The Sixteenth (East) Moot was to be held in Hong Kong, China, from 31 March to 7 April 2019.

2. Additional moots

Madrid Commercial Arbitration Moot 2018

212. The Commission noted that Carlos III University of Madrid had organized the Tenth International Commercial Arbitration Competition in Madrid from 16 to 20 April 2018. The Commission co-sponsored the Moot. Legal issues addressed by the teams related to an international sale of goods, where the United Nations Sales Convention, the New York Convention, the UNCITRAL Arbitration Rules and the Transparency Rules were applicable. A total of 27 teams from 13 jurisdictions participated in the Madrid Moot 2018, which was conducted in Spanish. The best team in oral arguments had been the Pontifical Catholic University of Peru. The Eleventh Madrid Moot was to be held from 1 to 5 April 2019.

Frankfurt Investment Moot Court

213. The Commission noted that the Eleventh Frankfurt Investment Moot Case involved the application of the Transparency Rules, with a key issue concerning the question of confidential documents. More than 80 teams from over 30 countries participated in the competition, which took place from 12 to 16 March 2018, and the National University of Singapore had been declared the best team in oral arguments. The Twelfth Moot will take place from 4 to 8 March 2019.

Mediation and negotiation competition

214. It was noted that the fourth mediation and negotiation competition organized jointly by IBA and VIAC with the support of the Commission was to take place in Vienna on 17–20 July 2018. Legal issues to be considered were those that were addressed at the Twenty-fifth Willem C. Vis International Commercial Arbitration Moot (see para. 209 above). A total of 33 teams from 15 jurisdictions had registered to participate.

Ian Fletcher International Insolvency Law Moot

215. The second Ian Fletcher International Insolvency Law Moot was held in Vancouver, Canada, on 5–8 February 2018, with the winning team being from the University of British Columbia (located in Vancouver). The Moot provides an opportunity to learn about international insolvency law and the use of the UNCITRAL Model Law on Cross-Border Insolvency. It is supported by the Commission and offers the best individual mooter the opportunity to visit UNCITRAL in New York or Vienna during a session of Working Group V (Insolvency Law) to observe first-hand the experience of Secretariat members.

D. Bibliography of recent writings related to the work of UNCITRAL

216. The UNCITRAL Law Library specializes in international commercial law. Its collection features important titles and online resources in that field in the six official languages of the United Nations. In 2017, library staff responded to approximately 520 reference requests, originating in over 50 countries, and hosted researchers from over 25 countries.

217. Considering the broader impact of UNCITRAL texts, the Commission took note of the bibliography of recent writings related to the work of UNCITRAL (A/CN.9/949) and the influence of UNCITRAL legislative guides, practice guides and contractual texts as described in academic and professional literature. The Commission noted the importance of facilitating a comprehensive approach to the creation of the bibliography and the need to remain informed of activities of non-governmental organizations active in the field of international trade law. In this regard, the Commission recalled and repeated its request that non-governmental organizations invited to the Commission's annual session donate copies of their journals, reports

and other publications to the UNCITRAL Law Library for review.[49] The Commission expressed appreciation to all non-governmental organizations that donated materials. The Commission noted, in particular, the addition of current and forthcoming issues of the following journals to the UNCITRAL Law Library collection: *The International Journal of Arbitration, Mediation and Dispute Management* (Chartered Institute of Arbitrators) and the *Dispute Resolution Journal* (American Arbitration Association), as well as new donations from the Centre de recherches informatique et droit, the European Consumer Centre Belgium, the International Union of Notaries and the Regional Centre for International Commercial Arbitration — Lagos. In addition, a great number of book donations were received from Beck, Bruylant, Cambridge University Press, Eleven, Kluwer, LexisNexis and Schulthess.

XIV. Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts

218. The Commission considered a note by the Secretariat on promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts (A/CN.9/946), which provided information on the current status of the Case Law on UNCITRAL Texts (CLOUT) system, including the digests of case law relating to the United Nations Sales Convention and the UNCITRAL Model Law on International Commercial Arbitration.

219. The Commission expressed its appreciation that CLOUT and the digests continued to be used by the Secretariat for promoting uniform interpretation of the law relating to UNCITRAL texts. The Commission also noted with satisfaction the increasing number of UNCITRAL legal texts that were currently represented in CLOUT. As at the publication date of A/CN.9/946, 190 issues of compiled case-law abstracts had been prepared, dealing with 1,752 cases. The cases related to the following legislative texts:

- The New York Convention
- Convention on the Limitation Period in the International Sale of Goods (New York, 1974) and Convention on the Limitation Period in the International Sale of Goods as amended by the Protocol of 11 April 1980 (Vienna)
- United Nations Convention on the Carriage of Goods by Sea (Hamburg, 1978)
- United Nations Sales Convention
- United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995)
- United Nations Convention on the Use of Electronic Communications in International Contracts (New York, 2005)
- UNCITRAL Model Law on International Commercial Arbitration (1985) with amendments as adopted in 2006
- UNCITRAL Model Law on International Credit Transfers (1992)
- UNCITRAL Model Law on Electronic Commerce (1996)
- UNCITRAL Model Law on Cross-Border Insolvency (1997)
- UNCITRAL Model Law on Electronic Signatures (2001)

220. The Commission took note of the considerable gap that still existed between the volume of abstracts referring to Western European and other States and those referring to other geographic regions. Similarly, the Commission noted that the United Nations Sales Convention and the UNCITRAL Model Law on International Commercial Arbitration were still the texts most represented in the CLOUT system, although in

[49] Ibid., *Seventieth Session, Supplement No. 17* (A/70/17), para. 264.

the period under review there was an increase in published cases concerning the New York Convention.

221. After taking note of the current composition of the network of national correspondents, the Commission encouraged States that had not yet appointed national correspondents to do so in order to contribute to the increased collection of relevant case law. The Commission also noted that in the period under review national correspondents had provided approximately 33 per cent of the abstracts published in CLOUT, while the rest of the abstracts had been prepared by voluntary contributors or by the Secretariat.

222. The Commission expressed its appreciation for the volume of users of the CLOUT database in the period under review, as well as the increasing number of full texts of decisions, including decisions stored in the database's archives, published in the database. The Commission also commended the Secretariat for its use of social media in order to promote visibility of the CLOUT system and encourage contributions.

223. As at previous sessions, the Commission took note with satisfaction of the performance of the website www.newyorkconvention1958.org, and the successful coordination between that website and CLOUT.

224. After drawing attention to the resource-intensive nature of the CLOUT system and the need for further means to sustain it, the Commission commended the Secretariat for its work despite its limited resources.

XV. Role of UNCITRAL in promoting the rule of law at the national and international levels

A. Introduction

225. The Commission recalled that the item had been on the agenda of the Commission since its forty-first session, in 2008,[50] in response to the General Assembly's invitation to the Commission to comment, in its report to the General Assembly, on the Commission's current role in promoting the rule of law.[51] The Commission further recalled that, at its forty-first to fiftieth sessions, from 2008 to 2017, the Commission, in its annual reports to the General Assembly, transmitted comments on its role in promoting the rule of law at the national and international levels, including in the post-conflict reconstruction context.[52]

226. The Commission also recalled that it had considered it essential to keep a regular dialogue with the Rule of Law Coordination and Resource Group through the Rule of Law Unit and to keep abreast of progress made in the integration of the work of UNCITRAL into the United Nations joint rule of law activities. The Commission recalled that, to that end, it requested the Secretariat to organize briefings by the Rule

---

[50] For the decision of the Commission to include the item on its agenda, see *Official Records of the General Assembly, Sixty-second Session, Supplement No. 17* (A/62/17), part two, paras. 111–113.

[51] General Assembly resolutions 62/70, para. 3; 63/128, para. 7; 64/116, para. 9; 65/32, para. 10; 66/102, para. 12; 67/97, para. 14; 68/116, para. 14; 69/123, para. 17; 70/118, para. 20; and 71/148, para. 22.

[52] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 17* and corrigendum (A/63/17 and Corr.1), para. 386; ibid., *Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 413–419; ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 313–336; ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 299–321; ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 195–227; ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), paras. 267–291; ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 215–240; ibid., *Seventieth Session, Supplement No. 17* (A/70/17), paras. 318–324; ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 317–342; and ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), paras. 435–441.

of Law Unit biannually, when sessions of the Commission were held in New York.[53] The Commission recalled that the briefings consequently took place at the Commission's forty-fifth, forty-seventh and forty-ninth sessions, in 2012, 2014 and 2016,[54] and it welcomed holding the rule of law briefing at its fifty-first session. (A summary of the briefing is contained in section B below.)

227. At its fifty-first session, in 2018, the Commission also took note of General Assembly resolution 72/119 on the rule of law at the national and international levels, in paragraph 25 of which the Assembly invited the Commission to continue to comment, in its reports to the General Assembly, on its current role in promoting the rule of law. The Commission recalled that it had been the practice in the Commission to focus comments on its current role in promoting the rule of law on a subtopic identified by the General Assembly for its deliberations under the rule of law agenda item at its subsequent session.

228. The Commission noted that the General Assembly, in its resolution 72/119, did not identify any specific subtopic for discussion at its next session, in 2018, inviting Member States and the Secretary-General to suggest possible subtopics for future Sixth Committee debates, for inclusion in the forthcoming annual report, with a view to assisting the Sixth Committee in choosing future subtopics (resolution 72/119, para. 29). The Commission further noted that, for that reason, no written note by the Secretariat was presented to the Commission at its fifty-first session.

229. In its comments to the General Assembly this year, the Commission decided to highlight the role for the promotion of the rule of law of the texts adopted or approved at the session, of its ongoing work in the areas of investor-State dispute settlement reform, electronic commerce and public-private partnerships, and of the New York Convention, whose sixtieth anniversary was celebrated during the session. (For comments of the Commission transmitted to the General Assembly under this agenda item, as requested in para. 25 of General Assembly resolution 72/119, see sect. C below.)

B. Summary of the rule of law briefing

230. The Chief of the Rule of Law Unit held a briefing on the current and future rule of law agenda of the United Nations and the expected role of UNCITRAL therein.

231. The Commission expressed appreciation to the Chief of the Rule of Law Unit for holding a briefing in UNCITRAL and looked forward to the next rule of law briefing at its fifty-third session, in 2020. The Commission noted with interest the increased attention being paid to the Sustainable Development Goals, in particular Goal 16. The Commission was of the view that this broader perspective offered an interesting avenue for a better focusing of its consideration of the relevance of its work for the broader agenda of the United Nations to promote the rule of law at the national and international levels. The Commission agreed to continue that discussion in connection with its consideration of proposals for changes in its working methods under agenda item 20 (see paras. 264–267 below).

C. Comments of the Commission on its current role in promoting the rule of law

232. The Commission brought the attention of the General Assembly to the preambular paragraphs of the decisions adopted by the Commission during the current

[53] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 335.

[54] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), paras. 199–210; ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 229–233; and ibid., *Seventy-first Session, Supplement No. 17* (A/71/17), paras. 313–317.

session that explained the role of the texts adopted, approved or celebrated at the session to the promotion of the rule of law (see paras. 49, 68, 111, 131 and 173 above).

233. It also highlighted the importance of the proper identity management in the digital economy, which was the subject of the current work of Working Group IV (see chapter VIII above), for the implementation of the United Nations anti-corruption, anti-money-laundering, anti-fraud and good governance agenda. The Commission also referred to issues of transparency, access to justice and accountability dealt with in its ongoing work on investor-State dispute settlement reform and on the revision of the UNCITRAL texts in the area of infrastructure development (see chapters VI and VII above).

XVI. Relevant General Assembly resolutions

234. The Commission recalled that, at its fiftieth session, in 2017, it had requested the Secretariat to replace an oral report to the Commission on relevant General Assembly resolutions with a written report to be issued before the relevant session.[55] Pursuant to that request, the Commission had before it at its fifty-first session a note by the Secretariat (A/CN.9/953) summarizing the content of the operative paragraphs of General Assembly resolution 72/113 on the report of UNCITRAL on the work of its fiftieth session and resolution 72/114 on the UNCITRAL Model Law on Electronic Transferable Records, both resolutions having been adopted by the General Assembly on 7 December 2017 on the recommendation of the Sixth Committee (A/72/458).

235. The Commission took note of those General Assembly resolutions.

XVII. Work programme

236. The Commission recalled its agreement to reserve time for discussion of its overall work programme as a separate topic at each session, in order to facilitate the effective planning of its activities.[56]

237. The Commission took note of the documents prepared to assist its discussions on the topic (A/CN.9/952 and A/CN.9/952/Corr.1 and the documents referred to therein, including the proposals contained in documents A/CN.9/944/Rev.1, A/CN.9/954, A/CN.9/959, A/CN.9/960 and A/CN.9/961, as well as the proposals referred to in working group documents and reports, namely A/CN.9/WG.V/WP.154 and A/CN.9/937, paras. 121–122, as well as A/CN.9/938, paras. 92–93 and annex).

A. Current legislative programme

238. The Commission took note of the progress of its working groups as reported earlier in the session (see chapters III to IX above) and confirmed the programme of current legislative activities set out in table 1 of document A/CN.9/952 and A/CN.9/952/Corr.1 as follows:

(a) As regards micro, small and medium-sized enterprises, the Commission confirmed that Working Group I should continue its work to prepare a legislative guide on a UNCITRAL limited liability organization (see para. 112 above);

(b) With respect to investor-State dispute settlement reform, the Commission agreed that Working Group III should continue with its work programme as mandated (see para. 145 above);

(c) As regards e-commerce, the Commission confirmed that Working Group IV should continue with its ongoing projects on legal issues related to identity management and trust services (see para. 159 above). With respect to contractual

[55] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 480.

[56] Ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 310.

aspects of cloud computing, the Commission noted that the draft Secretariat notes on the main issues of cloud computing contracts would be available to the Commission at its fifty-second session, in 2019 (see para. 150 above);

(d) With respect to insolvency, the Commission noted that it was anticipated that two draft legislative texts would be sufficiently developed for submission by Working Group V to the Commission for finalization and adoption in 2019, namely the draft model law on enterprise group insolvency and its guide to enactment and a supplement to part four of the *UNCITRAL Legislative Guide on Insolvency Law* addressing the obligations of directors of enterprise group companies in the period approaching insolvency (see para. 132 above). The Commission confirmed that the work on insolvency of micro, small and medium-sized enterprises should continue (see para. 133 above);

(e) As regards secured transactions, the Commission confirmed that Working Group VI should continue its work to prepare a practice guide on the contractual, transactional and regulatory issues arising in the context of secured transactions (see also para. 163 above), with a request that it be presented to the Commission in 2019 for finalization and adoption.

B. Future legislative programme

239. The Commission recalled the importance of a strategic approach to the allocation of resources to, inter alia, legislative development, and its role in setting the work programme of UNCITRAL, especially as regards the mandates of working groups.[57]

240. The Commission heard several proposals for possible future legislative development.

241. Firstly, the Government of Italy presented a proposal on possible future work on contractual networks (A/CN.9/954). It was recalled that an earlier proposal had been presented to the Commission at its fiftieth session, in 2017, and noted that document A/CN.9/954 clarified aspects of that proposal in response to comments received at the fiftieth session. It was noted that those networks provided an opportunity to organize cooperation between businesses without a requirement for a legal entity to be formed. They could facilitate sharing of resources; provide a means of accessing business opportunities not otherwise available to individual participating entities; facilitate access to finance for the network itself, rather than the individual participating entities; and permit sharing of property and of labour. It was pointed out that certain international organizations were undertaking projects using clusters, where the governance of the projects was organized in a manner similar to contractual networks but without the legal certainty provided by contractual networks. In conclusion, the delegation observed that work on such networks would complement the work on the UNCITRAL limited liability organization currently being considered by Working Group I.

242. The Government of Switzerland presented a proposal on possible future work on cross-border issues related to the judicial sale of ships (A/CN.9/944/Rev.1). The Commission recalled that a proposal had been made at its fiftieth session by CMI, that it had indicated its support for a colloquium to be initiated by CMI to discuss and advance the proposal, and that it had agreed to revisit the topic at a future session. The Commission noted that that colloquium had been held in February 2018 and that the proposal included the outcomes and conclusions of that colloquium.

243. In support of the proposal, it was noted that that issue had the potential to affect many areas of international trade and commerce, not simply the shipping industry, with several examples of that impact being provided. In support of work being undertaken by UNCITRAL, various parallels were drawn between the work currently

[57] Ibid., paras. 294 and 295.

being undertaken in Working Group V on recognition of insolvency-related judgments and a possible instrument on judicial sale of ships.

244. The Governments of Italy, Norway and Spain presented a proposal for possible future work in the field of dispute resolution (A/CN.9/959), in particular on expedited arbitration. The Government of Belgium supported that proposal in its submission (A/CN.9/961), suggesting in addition work on the conduct of arbitrators in the field of commercial arbitration, with a focus on questions of impartiality and independence of arbitrators. It was pointed out that the aim of the proposals was to improve the efficiency and quality of arbitral proceedings.

245. Regarding expedited arbitration, it was suggested that the work could consist of providing information on how the UNCITRAL Arbitration Rules could be modified or incorporated into contracts via arbitration clauses that provided for expedited procedures or in guidance to arbitral institutions adopting such procedures in order to ensure the right balance between speedy resolution of the process and respect for due process. Reference was also made to the possibility of considering jointly the topics of expedited arbitration and adjudication, as expedited arbitration would provide generally applicable tools for reducing the cost and time of arbitration, while adjudication would facilitate use of a particular tool that had demonstrated its utility in efficiently resolving disputes in a specific sector.

246. The Commission also heard the proposal that the Secretariat could undertake work on (a) updating the UNCITRAL Conciliation Rules (1980) to both reflect current practice and ensure consistency with the contents of the draft instruments finalized by the Commission at its current session, and (b) preparing notes on organizing mediation proceedings.

247. The Government of Czechia presented a proposal that the Secretariat should closely monitor developments relating to legal aspects of smart contracts and artificial intelligence (A/CN.9/960) and report back to the Commission on areas that might warrant uniform legal treatment, with a view to undertaking work in those fields when appropriate.

248. It was indicated that several suggestions had been made in the working groups and in the Commission with respect to various legal aspects of the digital economy. It was recalled that additional considerations on those legal aspects had been presented at the Congress held in 2017 on the occasion of the Commission's fiftieth session, to celebrate the fiftieth anniversary of UNCITRAL. It was suggested that UNCITRAL would benefit from a broader understanding of the legal issues related to the digital economy and, that to do so, it should monitor relevant developments on the basis of information compiled by the Secretariat. It was said that in addition to artificial intelligence and smart contracts, topics of possible relevance included the use of distributed ledger technology, supply chain management, payments and cross-border data flows. It was stressed that such work should not only legally enable the commercial use of new technologies and methods but also assist developing economies in bridging the digital gap.

249. In addition to the proposals noted above, reference was made to two proposals that had been considered by working groups and were contained in working group documents as noted in paragraph 237 above. The first of those proposals concerned warehouse receipts, which had first been considered at a colloquium on secured transactions (Vienna, 15–17 March 2017).[58] After further discussion at its thirty-third session (New York, 30 April–4 May 2018), Working Group VI requested a mandate on that issue to develop a modern and predictable legal regime (A/CN.9/938, paras. 92–93). In support of the proposal, the importance of warehouse receipts to agriculture and food security was noted, as well as their use in supply and value chains.

250. The second proposal concerned civil law aspects of asset tracing and recovery, which had been considered by Working Group V (A/CN.9/937, paras. 121–122). With respect to that proposal, it was suggested that it would be relevant not only to

[58] For further information, see www.uncitral.org/uncitral/en/commission/colloquia_security.html.

insolvency but also to treatment of commercial fraud and other topics. It was noted that many States lacked adequate legal tools for tracing and recovery. What was suggested was the development of a toolbox of legislative provisions from which States could choose, as indicated in document A/CN.9/WG.V/WP.154. It was emphasized that the work proposed was not intended to address criminal law or cross-border issues and that coordination and cooperation with other relevant organizations would be a key element, in order to avoid potential overlap and duplication. The first step, it was proposed, was to undertake work to explore the issues in more detail and identify the scope of possible work.

251. In that context, the European Union delegation presented as an alternative a proposal to dedicate future work to applicable law related to insolvency. It was stressed that the issue of applicable law was an important matter that warranted consideration.

252. After discussion, the Commission agreed that priority, in the allocation of working group time, should be given to the topics of judicial sale of ships and issues relating to expedited arbitration; that judicial sale of ships should be allocated to the first available working group, possibly Working Group VI when it had completed its current work on the practice guide, and that Working Group II should be mandated to take up issues relating to expedited arbitration.

253. Regarding the other topics discussed, the Commission came to the conclusion that the preparatory work on those matters was less mature, and given the limited resources of the Secretariat, should be given less priority. More preparatory work by the Secretariat would be needed before the Commission could decide on further steps on those matters. Accordingly, the Commission decided the following:

(a) The Secretariat should conduct exploratory and preparatory work on warehouse receipts in order to refer that work to a working group;

(b) The Secretariat should compile information on legal issues related to the digital economy, including by organizing, within existing resources and in cooperation with other organizations, symposiums, colloquiums and other expert meetings, and to report that information for its consideration at a future session. It was stressed that discussions should focus on identifying legal obstacles and their possible solutions and avoid privacy and data protection issues. In that respect, it was noted that Working Groups IV and VI had already compiled a list of legal matters related to the use of new technologies and methods, which could provide a basis for further expert discussion;

(c) With respect to the proposal on contractual networks, Working Group I was authorized to hold a colloquium in the context of a future working group session for the purpose of further analysing the relevance of those networks to the work on developing an enabling legal environment for micro, small and medium-sized enterprises and the desirability of taking up work of those networks. That discussion should also explore legal tools that achieve goals similar to contractual networks that were being used in both civil and common law jurisdictions;

(d) With regard to the proposal on asset tracing in the area of insolvency, the Secretariat should prepare a background study on the relevant issues, taking into account work undertaken by other organizations, in order to avoid duplication and overlap.

254. In the area of dispute settlement, the Commission noted that the Secretariat would prepare notes on organizing mediation proceedings and update the UNCITRAL Conciliation Rules in the light of the mediation framework adopted at its current session.

C. Technical cooperation and assistance activities

255. The Commission recalled the importance of support activities and the need to encourage such activities at the global and regional levels through the Secretariat, through the expertise available in the working groups and the Commission, through

member States and through partnering arrangements with relevant international organizations. It also recalled the importance of promoting increased awareness of UNCITRAL texts among those organizations and within the United Nations system.[59]

256. The Commission took note of the general priorities identified in the note, as well as the specific priorities for the period 2018–2019.

257. In concluding the consideration of the agenda item, it was emphasized that the above-mentioned activities should be undertaken taking into account the extent of the resources available to the Secretariat.

XVIII. Other business

A. Methods of work

258. The Commission heard a proposal presented by the Governments of France, Germany, Israel, Switzerland and the United States concerning the methods of work of the Commission.

259. In previous UNCITRAL meetings, the possibility had been raised of reducing the duration of Commission sessions to two weeks. The States making that proposal supported that idea and sought to initiate further discussion on the matter. It was suggested that sessions lasting three weeks posed a problem for many member States due to staff workload and that a two-week session would be easier to manage.

260. Those making the proposal also indicated that they saw various possibilities for making the Commission sessions more effective. The following changes were suggested for consideration:

(a) Several agenda items could be suitably addressed, at least in part, through information-only documents, for example, the following agenda items: "Coordination and cooperation", "Technical assistance to law reform", "Status and promotion of UNCITRAL legal texts" and "Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts: CLOUT and digests". Member States would be informed via those documents, and decisions generally would not need to be made. At most, a short explanation by the Secretariat would be required. States and organizations represented in the meeting could comment on those information documents. It was noted that information-only documents were already used in other United Nations organizations to help meetings run efficiently;

(b) The working groups should increasingly be asked to send legislative texts to the Commission only if they had already undergone extensive consultation; specific details which were of no special significance should be discussed and decided on in the working groups. The Commission should not assume the role of a working group but must continue to make final decisions on the results submitted by the working groups;

(c) Since 2008, the topic "Role of UNCITRAL in promoting the rule of law at the national and international levels" had been handled by the Commission. While the proposal did not aim to suggest that the Commission should no longer deal with that issue and while the presentations made on that topic had succeeded in bringing numerous interesting aspects to the Commission's attention, there had been only a limited amount of subsequent discussion. It was requested that the manner in which that issue was handled within the Commission be reviewed;

(d) Time during the annual sessions that would be freed up as a result of the proposal should still be utilized effectively. For example, those meeting days could be made available to the working groups, if necessary.

[59] *Official Records of the General Assembly, Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 263–265.

261. In summary, the following was proposed:

(a) Use of information-only documents with a short explanation;

(b) More efficient preparation by the working groups to enable more efficient discussions in the Commission;

(c) Review of how to handle the topic "Role of UNCITRAL in promoting the rule of law at the national and international levels" more efficiently;

(d) Flexible use of meeting days that would be freed up as a result of the proposal.

262. The Commission welcomed the proposal and, noting that the Secretariat had already implemented a number of the suggestions, commended its responsiveness to the request of member States for streamlining and focusing the Commission's agenda and the preparation for the Commission's session.

263. The Secretariat was requested to plan and prepare the fifty-second session of the Commission, in 2019, on the basis of the proposal.

264. In subsequent discussion, the Commission considered the proposal to generate discussion within the Commission on agenda item "Role of UNCITRAL in promoting the rule of law at the national and international levels" (see chapter XV above) and to improve the way the Commission handles that agenda item.

265. The Commission considered the possibility of broadening the discussion of its role in promoting the rule of law at the national and international levels to a discussion of the way the work of UNCITRAL relates to the 2030 Agenda for Sustainable Development and 17 Sustainable Development Goals, both with regard to the instruments developed by UNCITRAL and with regard to assistance to States in their achievement of the Goals.

266. It was suggested that in order for the Commission to achieve a more meaningful consideration of that agenda item, the Secretariat could prepare a paper outlining the way that the UNCITRAL instruments and texts relate to the Sustainable Development Goals and identifying concrete issues to be discussed by the Commission. It was further suggested that that paper could also take stock of the evolution of the agenda item relating to the rule of law over several Commission meetings and how the Commission could ensure that its work reflected the broader development agenda of the United Nations as a whole.

267. It was further decided that a discussion would take place at the fifty-second session of the Commission, in 2019, on the basis of the report to be prepared by the Secretariat.

268. Also related to the Commission's working methods, a request was made that email contacts for the delegations attending the Commission and the Working Groups be made available with a view to facilitating intersessional contacts and discussions among delegates. The Secretariat clarified that the list of participants for each session of the Commission and each working group did not contain contact details of the delegates but that it would look into a way to make those contacts available on the new version of the UNCITRAL website, in the areas reserved to States. In that connection, it was noted that the Secretariat needed to examine carefully applicable rules and policies on the treatment of similar data within the United Nations system.

269. A further suggestion was made with regard to the interaction between Working Group III, the Secretariat and the two groups constituted on its margins, namely the Academic Forum and the Group of Practitioners (see para. 144 above). It was suggested that the Working Group should clarify the way that the Academic Forum and the Group of Practitioners interacted with the Secretariat and with the Working Group respectively and how their contributions were made available to the members of the Working Group and were reflected in the background documents prepared by the Secretariat. To that effect, the Secretariat was asked to prepare a short paper establishing methods of work with the two groups already established and any further

group of representatives (if any). The Commission requested Working Group III to discuss the issue based on the paper prepared by the Secretariat and to formulate its preferred approach in the report to the Commission.

270. A further question was raised regarding the criteria for posting papers, articles and documents by contributors to Working Group III, by the Academic Forum, the Group of Practitioners or other stakeholders on the UNCITRAL website. The Secretariat indicated that that issue would be considered in the course of the overhaul of its website, and a paper identifying the relevant criteria would be presented to the Commission in its forthcoming session.

B. Internship programme

271. The Commission recalled the considerations taken by the UNCITRAL secretariat in selecting candidates for internship[60] and noted with satisfaction the continuing positive effects of changes introduced in 2013 and 2014 in the United Nations internship programme (selection procedures and eligibility requirements) on the pool of eligible and qualified candidates for internship from underrepresented countries, regions and language groups.

272. The Commission was informed that since the Secretariat's oral report to the Commission at its fiftieth session, in July 2017, 21 new interns had undertaken an internship with the UNCITRAL secretariat in Vienna. Most of the interns were from developing countries.

273. The Commission was informed that the large majority of applicants were from countries of the regional group of Western Europe and other States and that the Secretariat faced difficulties in attracting candidates from African and Latin American States, as well as candidates with fluent Arabic language skills.

274. States and observer organizations were requested to bring the possibility of applying for internships at the UNCITRAL secretariat to the attention of interested persons who met those specific requirements. It was highlighted that, since the internships were unpaid, States and observer organizations might also consider granting scholarships for the purpose of attracting those most qualified for an internship at UNCITRAL.

C. Evaluation of the role of the Secretariat in facilitating the work of the Commission

275. The Commission recalled that at its fortieth session, in 2007,[61] it had been informed of the programme budget for the biennium 2008–2009, which listed among the expected accomplishments of the UNCITRAL secretariat "facilitating the work of UNCITRAL". The performance measure for that expected accomplishment was the level of satisfaction of UNCITRAL with the services provided by its secretariat, as evidenced by a rating on a scale ranging from 1 to 5 (5 being the highest rating).[62] At that session, the Commission had agreed to provide feedback to the Secretariat.

276. From the fortieth session to the forty-fifth session of the Commission, in 2012, feedback was provided by States attending the annual sessions of UNCITRAL in response to the questionnaire circulated by the Secretariat by the end of the session. The practice had changed since the Commission's forty-fifth session, in 2012, partly because of the need to solicit more responses. Instead of an in-session questionnaire, the Secretariat started circulating to all States, closer to the start of each annual session of the Commission, a note verbale with the request to indicate, by filling in

[60] Ibid., *Sixty-sixth Session, Supplement No. 17* (A/66/17), paras. 328–330; ibid., *Sixty-eighth Session, Supplement No. 17* (A/68/17), para. 344; and ibid., *Sixty-ninth Session, Supplement No. 17* (A/69/17), paras. 277 and 278.

[61] Ibid., *Sixty-second Session, Supplement No. 17* (A/62/17), part one, para. 243.

[62] A/62/6 (Sect. 8) and Corr.1, table 8.19 (d).

the evaluation form enclosed to the note verbale, their level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat during the preceding session. A note verbale requesting to evaluate the performance of the UNCITRAL secretariat during the fiftieth session of UNCITRAL was circulated to all States Members of the United Nations on 14 May 2018, and the period covered was indicated as being from the start of the fiftieth session of UNCITRAL (3 July 2017).

277. The Commission was informed that the request had elicited 25 responses and that the level of satisfaction with the services provided to UNCITRAL by the UNCITRAL secretariat, as indicated in those responses, remained high (21 States respondents gave 5 out of 5 and 4 States respondents gave 4 out of 5). The Commission heard that States in their statements to the Sixth Committee of the General Assembly on the report of the Commission often included their views on the work of the UNCITRAL secretariat in servicing the Commission. Such statements did not easily lend themselves to the quantitative assessment.

278. The Commission took note of the concern that the level of responses to the request for evaluation remained low and that it was essential to receive from more States feedback about the UNCITRAL secretariat's performance in order to have a more objective evaluation of the role of the Secretariat. That was required for budgetary and other purposes.

279. The Commission expressed its deep appreciation to the Secretariat for its excellent work in servicing UNCITRAL.

XIX. Date and place of future meetings

280. The Commission recalled that at its thirty-sixth session, in 2003, it had agreed that: (a) working groups should normally meet for a one-week session twice a year; (b) extra time, if required, could be allocated from the unused entitlement of another working group provided that such arrangement would not result in the increase of the total number of 12 weeks of conference services per year currently allotted to sessions of all six working groups of the Commission; and (c) if any request by a working group for extra time would result in the increase of the 12-week allotment, it should be reviewed by the Commission, with proper justification being given by that working group regarding the reasons for which a change in the meeting pattern was needed.[63] The Commission noted that all working groups would meet for two one-week sessions before its fifty-second session, in 2019, except for Working Group II (Dispute Settlement), which would meet only for one one-week session that would take place in New York in the first half of 2019 (see para. 284 (b) below).

281. The Commission further recalled that at its fiftieth session, in 2017, the Commission had taken note of General Assembly resolutions on the pattern of conferences promulgating policies as regards significant holidays on which United Nations Headquarters and the Vienna International Centre remained open but United Nations bodies were invited to avoid holding meetings. The Commission had agreed to take into account those policies as far as possible when considering the dates of its future meetings.[64] It had noted at that time that dates tentatively scheduled for the second half of 2018 included Gurpurab (23 November 2018). The Commission had requested the Secretariat to explore whether an alternative week in the second half of 2018 could be found for a session of Working Group IV (Electronic Commerce) in Vienna that would not include a significant holiday, and had decided to consider the matter further at its next session.[65]

282. At its fifty-first session, the Commission was informed that no alternative dates for the second half of 2018 were found and the dates for the fifty-seventh session of

[63] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 17* (A/58/17), para. 275.

[64] Ibid., *Seventy-second Session, Supplement No. 17* (A/72/17), para. 489.

[65] Ibid., para. 490.

Working Group IV (Electronic Commerce) therefore included Gurpurab (23 November 2018). The Commission noted that other dates of future meetings as set out below did not include significant holidays.

A. Fifty-second session of the Commission

283. The Commission approved the holding of its fifty-second session in Vienna from 8 to 26 July 2019. The Commission agreed that it would aim to complete its work agenda in the first two weeks of the session, with the third week being devoted, for example, to expert discussions or a colloquium on aspects of topics for which the Commission had requested preparatory work or that were of broader interest for an UNCITRAL-wide discussion, such as the legal issues arising from particular regional or global trade law initiatives.

B. Sessions of working groups

1. Sessions of working groups between the fifty-first and fifty-second sessions of the Commission

284. The Commission approved the following schedule of meetings for its working groups:

(a) Working Group I (Micro, Small and Medium-sized Enterprises) would hold its thirty-first session in Vienna from 8 to 12 October 2018, and its thirty-second session in New York, from 25 to 29 March 2019;

(b) Working Group II (Dispute Settlement) would hold its sixty-ninth session in New York from 4 to 8 February 2019; no session would be held in Vienna in the second half of 2018;

(c) Working Group III (Investor-State Dispute Settlement Reform) would hold its thirty-sixth session in Vienna from 29 October to 2 November 2018, and its thirty-seventh session in New York from 1 to 5 April 2019;

(d) Working Group IV (Electronic Commerce) would hold its fifty-seventh session in Vienna from 19 to 23 November 2018,[66] and its fifty-eighth session in New York from 8 to 12 April 2019;

(e) Working Group V (Insolvency Law) would hold its fifty-fourth session in Vienna from 10 to 14 December 2018, and its fifty-fifth session in New York from 28 to 31 May 2019 (noting that that would be a 4-day session);

(f) Working Group VI (Security Interests) would hold its thirty-fourth session in Vienna from 17 to 21 December 2018, and its thirty-fifth session in New York from 13 to 17 May 2019.

2. Sessions of working groups in 2019 after the fifty-second session of the Commission

285. The Commission noted that the following tentative arrangements had been made for working group meetings in 2019 after its fifty-second session, subject to the approval by the Commission at that session:

(a) Working Group I (Micro, Small and Medium-sized Enterprises) would hold its thirty-third session in Vienna, from 30 September to 4 October 2019;

(b) Working Group II (Dispute Settlement) would hold its seventieth session in Vienna, from 23 to 27 September 2019;

(c) Working Group III (Investor-State Dispute Settlement Reform) would hold its thirty-eighth session in Vienna from 14 to 18 October 2019;

[66] 23 November 2018 is Gurpurab.

(d) Working Group IV (Electronic Commerce) would hold its fifty-ninth session in Vienna from 25 to 29 November 2019;

(e) Working Group V (Insolvency Law) would hold its fifty-sixth session in Vienna from 2 to 6 December 2019; and

(f) Working Group VI (Security Interests) would hold its thirty-sixth session in Vienna from 18 to 22 November 2019.

Annex I

United Nations Convention on International Settlement Agreements Resulting from Mediation

Preamble

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

Article 1. Scope of application

1. This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreement") which, at the time of its conclusion, is international in that:

(a) At least two parties to the settlement agreement have their places of business in different States; or

(b) The State in which the parties to the settlement agreement have their places of business is different from either:

(i) The State in which a substantial part of the obligations under the settlement agreement is performed; or

(ii) The State with which the subject matter of the settlement agreement is most closely connected.

2. This Convention does not apply to settlement agreements:

(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

(b) Relating to family, inheritance or employment law.

3. This Convention does not apply to:

(a) Settlement agreements:

(i) That have been approved by a court or concluded in the course of proceedings before a court; and

(ii) That are enforceable as a judgment in the State of that court;

(b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

Article 2. Definitions

1. For the purposes of article 1, paragraph 1:

(a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

2. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

3. "Mediation" means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.

Article 3. General principles

1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.

Article 4. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of the Party to the Convention where relief is sought, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of the Convention have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 5. Grounds for refusing to grant relief

1. The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be relied upon:

(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of that Party; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

Article 6. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 4, the competent authority of the Party to the Convention where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

Article 7. Other laws or treaties

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by

the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.

Article 8. Reservations

1. A Party to the Convention may declare that:

(a) It shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration;

(b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

2. No reservations are permitted except those expressly authorized in this article.

3. Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13 shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for that Party to the Convention shall take effect six months after the date of the deposit.

4. Reservations and their confirmations shall be deposited with the depositary.

5. Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.

Article 9. Effect on settlement agreements

The Convention and any reservation or withdrawal thereof shall apply only to settlement agreements concluded after the date when the Convention, reservation or withdrawal thereof enters into force for the Party to the Convention concerned.

Article 10. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 11. Signature, ratification, acceptance, approval, accession

1. This Convention is open for signature by all States in Singapore, on 1 August 2019, and thereafter at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatories.

3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 12. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over

matters governed by this Convention. Where the number of Parties to the Convention is relevant in this Convention, the regional economic integration organization shall not count as a Party to the Convention in addition to its member States that are Parties to the Convention.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "Party to the Convention", "Parties to the Convention", a "State" or "States" in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: (a) if, under article 4, relief is sought in a State that is member of such an organization and all the States relevant under article 1, paragraph 1, are members of such an organization; or (b) as concerns the recognition or enforcement of judgments between member States of such an organization.

Article 13. Non-unified legal systems

1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

(a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

(b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

(c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 14. Entry into force

1. This Convention shall enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 13 six months after the notification of the declaration referred to in that article.

Article 15. Amendment

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties to the Convention present and voting at the conference.

3. An adopted amendment shall be submitted by the depositary to all the Parties to the Convention for ratification, acceptance or approval.

4. An adopted amendment shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties to the Convention that have expressed consent to be bound by it.

5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 16. Denunciations

1. A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to settlement agreements concluded before the denunciation takes effect.

DONE at ---- this [X] day of [X] ------, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

Annex II

UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)

Section 1 — General provisions

Article 1. Scope of application of the Law and definitions

1. This Law applies to international commercial[1] mediation[2] and to international settlement agreements.

2. For the purposes of this Law, "mediator" means a sole mediator or two or more mediators, as the case may be.

3. For the purposes of this Law, "mediation" means a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute.

Article 2. Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Section 2 — International commercial mediation

Article 3. Scope of application of the section and definitions

1. This section applies to international[3] commercial mediation.

---

[1] The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; and carriage of goods or passengers by air, sea, rail or road.

[2] In its previously adopted texts and relevant documents, UNCITRAL used the term "conciliation" with the understanding that the terms "conciliation" and "mediation" were interchangeable. In preparing this Model Law, the Commission decided to use the term "mediation" instead in an effort to adapt to the actual and practical use of the terms and with the expectation that this change will facilitate the promotion and heighten the visibility of the Model Law. This change in terminology does not have any substantive or conceptual implications.

[3] States wishing to enact this section to apply to domestic as well as international mediation may wish to consider the following changes to the text:

- Delete the word "international" in paragraph 1 of articles 1 and 3, and
- Delete paragraphs 2, 3 and 4 of article 3, and modify references to paragraphs accordingly.

2. A mediation is "international" if:

(a) The parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) The State in which the parties have their places of business is different from either:

(i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or

(ii) The State with which the subject matter of the dispute is most closely connected.

3. For the purposes of paragraph 2:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to mediate;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

4. This section also applies to commercial mediation when the parties agree that the mediation is international or agree to the applicability of this section.

5. The parties are free to agree to exclude the applicability of this section.

6. Subject to the provisions of paragraph 7 of this article, this section applies irrespective of the basis upon which the mediation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

7. This section does not apply to:

(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and

(b) [...].

Article 4. Variation by agreement

Except for the provisions of article 7, paragraph 3, the parties may agree to exclude or vary any of the provisions of this section.

Article 5. Commencement of mediation proceedings[4]

1. Mediation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in mediation proceedings.

2. If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

Article 6. Number and appointment of mediators

1. There shall be one mediator, unless the parties agree that there shall be two or more mediators.

---

[4] The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article X. Suspension of limitation period

1. When the mediation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the mediation is suspended.

2. Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the mediation ended without a settlement agreement.

2. The parties shall endeavour to reach agreement on a mediator or mediators, unless a different procedure for their appointment has been agreed upon.

3. Parties may seek the assistance of an institution or person in connection with the appointment of mediators. In particular:

(a) A party may request such an institution or person to recommend suitable persons to act as mediator; or

(b) The parties may agree that the appointment of one or more mediators be made directly by such an institution or person.

4. In recommending or appointing individuals to act as mediator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and, where appropriate, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties.

5. When a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 7. Conduct of mediation

1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.

2. Failing agreement on the manner in which the mediation is to be conducted, the mediator may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

3. In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

4. The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute.

Article 8. Communication between mediator and parties

The mediator may meet or communicate with the parties together or with each of them separately.

Article 9. Disclosure of information

When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the mediation. However, when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the mediation.

Article 10. Confidentiality

Unless otherwise agreed by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 11. Admissibility of evidence in other proceedings

1. A party to the mediation proceedings, the mediator and any third person, including those involved in the administration of the mediation proceedings, shall not

in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;

(b) Views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the mediation proceedings;

(d) Proposals made by the mediator;

(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;

(f) A document prepared solely for purposes of the mediation proceedings.

2. Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

4. The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the mediation proceedings.

5. Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a mediation.

Article 12. Termination of mediation proceedings

The mediation proceedings are terminated:

(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;

(b) By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;

(c) By a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration; or

(d) By a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated, on the date of the declaration.

Article 13. Mediator acting as arbitrator

Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

Article 14. Resort to arbitral or judicial proceedings

Where the parties have agreed to mediate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred

arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

Article 15. Binding and enforceable nature of settlement agreements

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable.

Section 3 — International settlement agreements[5]

Article 16. Scope of application of the section and definitions

1. This section applies to international agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreements").[6]

2. This section does not apply to settlement agreements:

(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

(b) Relating to family, inheritance or employment law.

3. This section does not apply to:

(a) Settlement agreements:

(i) That have been approved by a court or concluded in the course of proceedings before a court; and

(ii) That are enforceable as a judgment in the State of that court;

(b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

4. A settlement agreement is "international" if, at the time of the conclusion of the settlement agreement:[7]

(a) At least two parties to the settlement agreement have their places of business in different States; or

(b) The State in which the parties to the settlement agreement have their places of business is different from either:

(i) The State in which a substantial part of the obligations under the settlement agreement is to be performed; or

(ii) The State with which the subject matter of the settlement agreement is most closely connected.

5. For the purposes of paragraph 4:

(a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the

[5] A State may consider enacting this section to apply to agreements settling a dispute, irrespective of whether they resulted from mediation. Adjustments would then have to be made to relevant articles.

[6] A State may consider enacting this section to apply only where the parties to the settlement agreement agreed to its application.

[7] A State may consider broadening the definition of "international" settlement agreement by adding the following subparagraph to paragraph 4: "A settlement agreement is also 'international' if it results from international mediation as defined in article 3, paragraphs 2, 3 and 4."

settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

6. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

Article 17. General principles

1. A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this section.

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down in this section, in order to prove that the matter has already been resolved.

Article 18. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this section shall supply to the competent authority of this State:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator, is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of this State, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of this section have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 19. Grounds for refusing to grant relief

1. The competent authority of this State may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be relied upon:

(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

2. The competent authority of this State may also refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of this State; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of this State.

Article 20. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 18, the competent authority of this State where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

Annex III

UNCITRAL Model Law on Recognition and Enforcement of Insolvency-related Judgments

Preamble

1. The purpose of this Law is:

(a) To create greater certainty in regard to rights and remedies for recognition and enforcement of insolvency-related judgments;

(b) To avoid the duplication of insolvency proceedings;

(c) To ensure timely and cost-effective recognition and enforcement of insolvency-related judgments;

(d) To promote comity and cooperation between jurisdictions regarding insolvency-related judgments;

(e) To protect and maximize the value of insolvency estates; and

(f) Where legislation based on the UNCITRAL Model Law on Cross-Border Insolvency has been enacted, to complement that legislation.

2. This Law is not intended:

(a) To restrict provisions of the law of this State that would permit the recognition and enforcement of an insolvency-related judgment;

(b) To replace legislation enacting the UNCITRAL Model Law on Cross-Border Insolvency or limit the application of that legislation;

(c) To apply to the recognition and enforcement in the enacting State of an insolvency-related judgment issued in the enacting State; or

(d) To apply to the judgment commencing the insolvency proceeding.

Article 1. Scope of application

1. This Law applies to the recognition and enforcement of an insolvency-related judgment issued in a State that is different to the State in which recognition and enforcement are sought.

2. This Law does not apply to [...].

Article 2. Definitions

For the purposes of this Law:

(a) "Insolvency proceeding" means a collective judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of a debtor are or were subject to control or supervision by a court or other competent authority for the purpose of reorganization or liquidation;

(b) "Insolvency representative" means a person or body, including one appointed on an interim basis, authorized in an insolvency proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the insolvency proceeding;

(c) "Judgment" means any decision, whatever it may be called, issued by a court or administrative authority, provided an administrative decision has the same effect as a court decision. For the purposes of this definition, a decision includes a decree or order, and a determination of costs and expenses. An interim measure of protection is not to be considered a judgment for the purposes of this Law;

(d) "Insolvency-related judgment":

(i) Means a judgment that:

a. Arises as a consequence of or is materially associated with an insolvency proceeding, whether or not that insolvency proceeding has closed; and

b. Was issued on or after the commencement of that insolvency proceeding; and

(ii) Does not include a judgment commencing an insolvency proceeding.

Article 3. International obligations of this State

1. To the extent that this Law conflicts with an obligation of this State arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

2. This Law shall not apply to a judgment where there is a treaty in force concerning the recognition or enforcement of civil and commercial judgments, and that treaty applies to the judgment.

Article 4. Competent court or authority

The functions referred to in this Law relating to recognition and enforcement of an insolvency-related judgment shall be performed by [*specify the court, courts, authority or authorities competent to perform those functions in the enacting State*] and by any other court before which the issue of recognition is raised as a defence or as an incidental question.

Article 5. Authorization to act in another State in respect of an insolvency-related judgment issued in this State

A [*insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State*] is authorized to act in another State with respect to an insolvency-related judgment issued in this State, as permitted by the applicable foreign law.

Article 6. Additional assistance under other laws

Nothing in this Law limits the power of a court or a [*insert the title of the person or body administering a reorganization or liquidation under the law of the enacting State*] to provide additional assistance under other laws of this State.

Article 7. Public policy exception

Nothing in this Law prevents the court from refusing to take an action governed by this Law if the action would be manifestly contrary to the public policy, including the fundamental principles of procedural fairness, of this State.

Article 8. Interpretation

In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

Article 9. Effect and enforceability of an insolvency-related judgment

An insolvency-related judgment shall be recognized only if it has effect in the originating State and shall be enforced only if it is enforceable in the originating State.

Article 10. Effect of review in the originating State on recognition and enforcement

1. Recognition or enforcement of an insolvency-related judgment may be postponed or refused if the judgment is the subject of review in the originating State or if the time limit for seeking ordinary review in that State has not expired. In such cases, the court may also make recognition or enforcement conditional on the provision of such security as it shall determine.

2. A refusal under paragraph 1 does not prevent a subsequent application for recognition or enforcement of the judgment.

Article 11. Procedure for seeking recognition and enforcement of an insolvency-related judgment

1. An insolvency representative or other person entitled under the law of the originating State to seek recognition and enforcement of an insolvency-related judgment may seek recognition and enforcement of that judgment in this State. The issue of recognition may also be raised as a defence or as an incidental question.

2. When recognition and enforcement of an insolvency-related judgment is sought under paragraph 1, the following shall be submitted to the court:

(a) A certified copy of the insolvency-related judgment; and

(b) Any documents necessary to establish that the insolvency-related judgment has effect and, where applicable, is enforceable in the originating State, including information on any pending review of the judgment; or

(c) In the absence of evidence referred to in subparagraphs (a) and (b), any other evidence on those matters acceptable to the court.

3. The court may require translation of documents submitted pursuant to paragraph 2 into an official language of this State.

4. The court is entitled to presume that documents submitted pursuant to paragraph 2 are authentic, whether or not they have been legalized.

5. Any party against whom recognition and enforcement is sought has the right to be heard.

Article 12. Provisional relief

1. From the time recognition and enforcement of an insolvency-related judgment is sought until a decision is made, where relief is urgently needed to preserve the possibility of recognizing and enforcing an insolvency-related judgment, the court may, at the request of an insolvency representative or other person entitled to seek recognition and enforcement under article 11, paragraph 1, grant relief of a provisional nature, including:

(a) Staying the disposition of any assets of any party or parties against whom the insolvency-related judgment has been issued; or

(b) Granting other legal or equitable relief, as appropriate, within the scope of the insolvency-related judgment.

2. [*Insert provisions (or refer to provisions in force in the enacting State) relating to notice, including whether notice would be required under this article.*]

3. Unless extended by the court, relief granted under this article terminates when a decision on recognition and enforcement of the insolvency-related judgment is made.

Article 13. Decision to recognize and enforce an insolvency-related judgment

Subject to articles 7 and 14, an insolvency-related judgment shall be recognized and enforced provided:

(a) The requirements of article 9 with respect to effect and enforceability are met;

(b) The person seeking recognition and enforcement of the insolvency-related judgment is an insolvency representative within the meaning of article 2, subparagraph (b), or another person entitled to seek recognition and enforcement of the judgment under article 11, paragraph 1;

(c) The application meets the requirements of article 11, paragraph 2; and

(d) Recognition and enforcement is sought from a court referred to in article 4, or the question of recognition arises by way of defence or as an incidental question before such a court.

Article 14. Grounds to refuse recognition and enforcement of an insolvency-related judgment

In addition to the ground set forth in article 7, recognition and enforcement of an insolvency-related judgment may be refused if:

(a) The party against whom the proceeding giving rise to the judgment was instituted:

(i) Was not notified of the institution of that proceeding in sufficient time and in such a manner as to enable a defence to be arranged, unless the party entered an appearance and presented their case without contesting notification in the originating court, provided that the law of the originating State permitted notification to be contested; or

(ii) Was notified in this State of the institution of that proceeding in a manner that is incompatible with the rules of this State concerning service of documents;

(b) The judgment was obtained by fraud;

(c) The judgment is inconsistent with a judgment issued in this State in a dispute involving the same parties;

(d) The judgment is inconsistent with an earlier judgment issued in another State in a dispute involving the same parties on the same subject matter, provided the earlier judgment fulfils the conditions necessary for its recognition and enforcement in this State;

(e) Recognition and enforcement would interfere with the administration of the debtor's insolvency proceedings, including by conflicting with a stay or other order that could be recognized or enforced in this State;

(f) The judgment:

(i) Materially affects the rights of creditors generally, such as determining whether a plan of reorganization or liquidation should be confirmed, a discharge of the debtor or of debts should be granted or a voluntary or out-of-court restructuring agreement should be approved; and

(ii) The interests of creditors and other interested persons, including the debtor, were not adequately protected in the proceeding in which the judgment was issued;

(g) The originating court did not satisfy one of the following conditions:

(i) The court exercised jurisdiction on the basis of the explicit consent of the party against whom the judgment was issued;

(ii) The court exercised jurisdiction on the basis of the submission of the party against whom the judgment was issued, namely that that party argued on the merits before the court without objecting to jurisdiction or to the exercise of jurisdiction within the time frame provided in the law of the originating State, unless it was evident that such an objection to jurisdiction would not have succeeded under that law;

(iii) The court exercised jurisdiction on a basis on which a court in this State could have exercised jurisdiction; or

(iv) The court exercised jurisdiction on a basis that was not incompatible with the law of this State;

[*States that have enacted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency might wish to enact subparagraph (h).*]

(h) The judgment originates from a State whose insolvency proceeding is not or would not be recognizable under [*insert a reference to the law of the enacting State giving effect to the UNCITRAL Model Law on Cross-Border Insolvency*], unless:

(i) The insolvency representative of a proceeding that is or could have been recognized under [*insert a reference to the law of the enacting State giving effect to the UNCITRAL Model Law on Cross-Border Insolvency*] participated in the proceeding in the originating State to the extent of engaging in the substantive merits of the cause of action to which that proceeding related; and

(ii) The judgment relates solely to assets that were located in the originating State at the time the proceeding in the originating State commenced.

Article 15. Equivalent effect

1. An insolvency-related judgment recognized or enforceable under this Law shall be given the same effect it [has in the originating State] or [would have had if it had been issued by a court of this State].[1]

2. If the insolvency-related judgment provides for relief that is not available under the law of this State, that relief shall, to the extent possible, be adapted to relief that is equivalent to, but does not exceed, its effects under the law of the originating State.

Article 16. Severability

Recognition and enforcement of a severable part of an insolvency-related judgment shall be granted where recognition and enforcement of that part is sought, or where only that part of the judgment is capable of being recognized and enforced under this Law.

[*States that have enacted legislation based on the UNCITRAL Model Law on Cross-Border Insolvency will be aware of judgments that may have cast doubt on whether judgments can be recognized and enforced under article 21 of that Model Law. States may therefore wish to consider enacting the following provision:*]

Article X. Recognition of an insolvency-related judgment under [*insert a cross-reference to the legislation of this State enacting article 21 of the UNCITRAL Model Law on Cross-Border Insolvency*]

Notwithstanding any prior interpretation to the contrary, the relief available under [*insert a cross-reference to the legislation of this State enacting article 21 of the UNCITRAL Model Law on Cross-Border Insolvency*] includes recognition and enforcement of a judgment.

[1] The enacting State may wish to note that it should choose between the two alternatives provided in square brackets. An explanation of this provision is provided in the Guide to Enactment in the notes to article 15.

Annex IV

List of documents before the Commission at its fifty-first session

Symbol	*Title or description*
A/CN.9/927/Rev.1	Provisional agenda, annotations thereto and scheduling of meetings of the fifty-first session
A/CN.9/928	Report of Working Group I (Micro, Small and Medium-sized Enterprises) on the work of its twenty-ninth session
A/CN.9/929	Report of Working Group II (Dispute Settlement) on the work of its sixty-seventh session
A/CN.9/930/Rev.1	Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth session — Part I
A/CN.9/930/Add.1/Rev.1	Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fourth session — Part II
A/CN.9/931	Report of Working Group V (Insolvency Law) on the work of its fifty-second session
A/CN.9/932	Report of Working Group VI (Security Interests) on the work of its thirty-second session
A/CN.9/933	Report of Working Group I (Micro, Small and Medium-sized Enterprises) on the work of its thirtieth session
A/CN.9/934	Report of Working Group II (Dispute Settlement) on the work of its sixty-eighth session
A/CN.9/935	Report of Working Group III (Investor-State Dispute Settlement Reform) on the work of its thirty-fifth session
A/CN.9/936	Report of Working Group IV (Electronic Commerce) on the work of its fifty-sixth session
A/CN.9/937	Report of Working Group V (Insolvency Law) on the work of its fifty-third session
A/CN.9/938	Report of Working Group VI (Security Interests) on the work of its thirty-third session
A/CN.9/939 and A/CN.9/939/Add.1, A/CN.9/939/Add.2 and A/CN.9/939/Add.3	Public-private partnerships (PPPs): proposed updates to the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects*
A/CN.9/940	Draft legislative guide on key principles of a business registry
A/CN.9/941	Adopting an enabling legal environment for the operation of micro, small and medium-sized enterprises (MSMEs)
A/CN.9/942	Settlement of commercial disputes: international commercial mediation — draft convention on international settlement agreements resulting from mediation
A/CN.9/943	Settlement of commercial disputes: international commercial mediation — draft model law on international commercial mediation and international settlement agreements resulting from mediation

Symbol	*Title or description*
A/CN.9/944/Rev.1	Possible future work on cross-border issues related to the judicial sale of ships: proposal from the Government of Switzerland
A/CN.9/945	Settlement of commercial disputes: draft convention on international settlement agreements resulting from mediation — draft model law on international commercial mediation and international settlement agreements resulting from mediation. Compilation of comments
A/CN.9/946	Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts
A/CN.9/947	Activities of the UNCITRAL Regional Centre for Asia and the Pacific
A/CN.9/948	Coordination activities
A/CN.9/949	Bibliography of recent writings related to the work of UNCITRAL
A/CN.9/950	Status of conventions and model laws
A/CN.9/951	Coordination and cooperation: international governmental and non-governmental organizations invited to sessions of UNCITRAL and its working groups
A/CN.9/952 and A/CN.9/952/Corr.1	Work programme of the Commission
A/CN.9/953	Relevant General Assembly resolutions
A/CN.9/954	Contractual networks and economic development: a proposal by Italy for possible future work by UNCITRAL on alternative forms of organization to corporate-like models — advanced proposal
A/CN.9/955	Recognition and enforcement of insolvency-related judgments: draft guide to enactment of the model law
A/CN.9/956 and A/CN.9/956/Add.1, A/CN.9/956/Add.2 and A/CN.9/956/Add.3	Compilation of comments on the draft model law on the recognition and enforcement of insolvency-related judgments as contained in an annex to the report of Working Group V (Insolvency Law) on the work of its fifty-second session (A/CN.9/931)
A/CN.9/957	Public-private partnerships (PPPs): proposed updates to the *UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects* —comments by the World Bank
A/CN.9/958/Rev.1	Technical cooperation and assistance
A/CN.9/959	Possible future work: proposal by the Governments of Italy, Norway and Spain — future work for Working Group II
A/CN.9/960	Work programme of the Commission: legal aspects of smart contracts and artificial intelligence — submission by Czechia
A/CN.9/961	Possible future work: proposal by the Government of Belgium — future work for Working Group II